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33



B-1

B-1

ISSN 1180-4300

## Legislative Assembly of Ontario

Second session, 35th Parliament

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 22 April 1992

# Journal des débats (Hansard)

Le mercredi 22 avril 1992

## Standing committee on the Ombudsman

Organization

## Comité permanent de l'ombudsman

Organisation



Chair: Mark Morrow  
Clerk: Franco Carrozza

Président : Mark Morrow  
Greffier : Franco Carrozza

Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



### **Table of Contents**

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 22 April 1992

The committee met at 1008 in room 151.

### ELECTION OF CHAIR

**Clerk of the Committee (Mr Franco Carrozza):** Good morning, members. My name is Franco Carrozza; I am the clerk of the committee. This gentleman is Paul Murray; he is the researcher and also counsel to the committee. My duty is to call upon you to elect one of your members as Chair. I will open nominations.

**Mr Noel Duignan (Halton North):** I nominate Mark Morrow as Chair.

**Clerk of the Committee:** Are there any other nominations? Being none, I shall call upon Mr Morrow to take the Chair.

### ELECTION OF VICE-CHAIR

**The Chair (Mr Mark Morrow):** Thank you very much, members of the committee. The second item on our agenda is the election of the Vice-Chair. I would now like to open the floor for nominations.

**Mr Duignan:** I would like to nominate Christel Haeck.

**The Chair:** Are there any further nominations? Seeing none, I declare the nominations closed. Christel, will you stand for Vice-Chair?

**Ms Christel Haeck (St Catharines-Brock):** Thank you, I will stand.

### BUSINESS SUBCOMMITTEE

**The Chair:** Ms Haeck moves that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair or at the request of any member thereof to consider and report to the committee on the business of the committee; that substitution be permitted on the subcommittee; that the presence of all members of the subcommittee is necessary to constitute a quorum; and that the subcommittee be composed of Mr Morrow, Chair, Christel Haeck, Vice-Chair, Mr Miclash for the Liberal Party and Mr Murdoch from the third party.

Motion agreed to.

### SUBCOMMITTEE ON COMMUNICATIONS FROM THE PUBLIC

**The Chair:** Item 3 on the agenda is establishing a subcommittee on communications from the public.

Ms Haeck moves that a subcommittee be struck to consider on the committee's behalf communications from the public; the subcommittee to be composed of one member from each party and the Chair of the committee, namely, Mr Morrow, Chair, Christel Haeck, Vice-Chair, Mr Miclash for the Liberal Party and Mr Murdoch for the third party, with a quorum of four; substitution shall be permitted on written notice. All communications from the public to the committee shall be referred to the subcommittee, which shall

review and respond to them, provided that all decisions by the subcommittee shall be unanimous; any matters which are not decided unanimously by the subcommittee shall be considered by the full committee. The subcommittee shall report to the committee, for consideration by it, any matters which in the subcommittee's opinion warrant the full committee's attention. The subcommittee shall, subject to direction by the committee, determine its procedures.

Any discussion?

**Mr Frank Miclash (Kenora):** Could I get Mr Ramsay's name substituted for my name on that second motion?

**The Chair:** Yes.

Motion agreed to.

### ORGANIZATION

**The Chair:** Item 4 on the agenda, discussion as to organizing a meeting of the subcommittee to review cases from the public. I have a recommendation to bring forward to you that the subcommittee meet on April 30—it would be a Thursday afternoon—to review the cases from the public to bring back to the committee as a whole. Any discussion on that?

**Ms Haeck:** Is there a chance that another time could be found? I have House duty consistently at that time.

**The Chair:** How's next Wednesday morning? The subcommittee will meet next Wednesday morning.

**Mr Hans Daigeler (Nepean):** Is that prior to the committee meeting next week?

**The Chair:** That's our next item of business, item 5, discussion as to the next committee meeting to review the draft of the annual report. I have a recommendation here that we meet as a whole on May 6. Is there any discussion on this? It's a Wednesday morning.

**Mr Bill Murdoch (Grey):** Two weeks?

**The Chair:** That's basically in two weeks, Mr Murdoch. At this time, Paul might like to give us an update on how the report is going, but first we have to decide on May 6. Is that agreeable to everybody? Agreed.

Paul, would you care to say something?

**Mr Paul Murray:** Sure. As you know, the last time we met in March we discussed the contents of our next annual report. I've been preparing that and we've set a day, May 6, to review a first draft of that report. We need those extra couple of weeks because we're still awaiting some responses from certain ministries we wrote letters to. That's basically where we're at with the report at this point.

**The Chair:** Thank you very much. Is there any other business before us? Seeing none, we stand adjourned until May 6.

The committee adjourned at 1016.



## CONTENTS

Wednesday 22 April 1992

Election of Chair . . . . .	B-1
Election of Vice-Chair . . . . .	B-1
Business subcommittee . . . . .	B-1
Subcommittee on communications from the public . . . . .	B-1
Organization . . . . .	B-1

### STANDING COMMITTEE ON THE OMBUDSMAN

**Chair / Président:** Morrow, Mark (Wentworth East/-Est ND)

**Vice-Chair / Vice-Présidente:** Haeck, Christel (St Catharines-Brock ND)

Akande, Zanana L. (St Andrew-St Patrick ND)

Drainville, Dennis (Victoria-Haliburton ND)

Duignan, Noel (Halton North/-Nord ND)

Henderson, D. James (Etobicoke-Humber L)

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)

Miclash, Frank (Kenora L)

Murdoch, Bill (Grey PC)

Perruzza, Anthony (Downsview ND)

Ramsay, David (Timiskaming L)

Witmer, Elizabeth (Waterloo North/-Nord PC)

**Clerk / Greffier:** Carrozza, Franco

**Staff / Personnel:** Murray, Paul, committee counsel and research officer, Legislative Research Service





B-2

B-2

ISSN 1180-4300

**Legislative Assembly  
of Ontario**

Second session, 35th Parliament

**Official Report  
of Debates  
(Hansard)**

Tuesday 18 August 1992

**Standing committee on  
the Ombudsman**

Review of the Office  
of the Ombudsman

**Assemblée législative  
de l'Ontario**

Deuxième session, 35<sup>e</sup> législature

**Journal  
des débats  
(Hansard)**

Mardi 18 août 1992

**Comité permanent de  
l'ombudsman**

Examen du Bureau  
de l'ombudsman



Chair: Mark Morrow  
Clerk: Franco Carrozza

Président : Mark Morrow  
Greffier : Franco Carrozza



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday 18 August 1992

The committee met at 1012 in room 151.

### REVIEW OF THE OFFICE OF THE OMBUDSMAN

**The Chair (Mr Mark Morrow):** To the viewing audience, this is the standing committee on the Ombudsman. I'm the Chair, Mark Morrow. We're here for the next two weeks by a motion passed in the Legislative Assembly, July 23, authorizing us to review the Office of the Ombudsman. I welcome you. Now I will turn the chair over to the clerk to advise us of the latest updates.

**Clerk of the Committee (Mr Franco Carrozza):** To bring you all up to date, at our last meeting of the committee on July 15, the clerk was directed on a number of motions approved by the committee specifically to advertise the committee's hearings, which was done on July 30, and also to prepare a listing of witnesses, which was also approved by the committee. You have before you a copy of the list of expert witnesses we have invited. The other item is that the agenda is prepared for the approval of the subcommittee and was delivered to the members.

We also have a listing of questions prepared by our research department that were mailed to the expert witnesses to permit them to focus better on the area that the committee wishes them to give us evidence on. You have that before you.

I'd like to inform you that there are approximately 10 groups that we have invited that request of the committee that they be permitted to send us a written submission. Then, if the committee sees the submission and wishes them to appear in September, they request that they be allowed to appear.

I'll give you the names of them to keep you informed: Information and Privacy Commissioner; Ontario Teachers' Federation; Ontario Hospital Association; Professor Rowat from Carleton University; the Workers' Compensation Appeals Tribunal; the Social Assistance Review Board; Ontario Human Rights Commission; Association of Municipalities of Ontario; the Law Society of Upper Canada; the Ombudsman of New Brunswick.

I also have prepared the agenda for the upcoming two weeks. There is one addition for this afternoon, our Speaker, David Warner. We have invited him in his capacity as the chair of the Board of Internal Economy for the Legislature of Ontario. He will appear at 3 o'clock this afternoon.

I also must inform you that the Ombudsman of Ontario has prepared a special report for the Legislature. It was tabled before the Clerk yesterday afternoon.

Yesterday morning the subcommittee of the committee met. It had invited the Ombudsman of Ontario to appear before it in a closed session. The Ombudsman did not appear. That is the report; there was no subcommittee meeting.

**Mr Alvin Curling (Scarborough North):** Did you get anything on why she did not appear? Did she give a reason?

**Clerk of the Committee:** She sent each member of the committee a letter which was received, I believe, Monday morning. I brought copies of it to the subcommittee. I received them in my office. They were delivered on Sunday. I received them on Monday morning.

That is all I have at this time.

**Mr George Mammoliti (Yorkview):** Just a question in terms of witnesses: The list of people you've mentioned, are they the only witnesses we have planned to come to—

**Clerk of the Committee:** No. We advertised across the province in the dailies. There were a number of individuals the subcommittee agreed to hear from. You will find them in your agenda.

**Mr Mammoliti:** I haven't had a chance to go through all these papers, but there's a suggestion I'd like to make. Have we made any attempts to let all staff in the Ombudsman's office know that we're looking for witnesses? I certainly would like to ask a few of them some questions in terms of what's been happening in the office over the last little while.

I don't know whether you'd want me to put a request forward at this level. I don't know at this point. How you want me to do that, Mr Chair, is totally up to you. I certainly would like the staff of the Ombudsman's office to know that we're conducting this. Perhaps a letter of some sort to them might be appropriate.

**The Chair:** Thank you very much, Mr Mammoliti. That's a very complicated question. If you wouldn't mind, I'll let the clerk answer that.

**Clerk of the Committee:** When we last met, the committee decided to advertise across the province to permit individuals who had any information to add to our committee review to do so. At this time, I am not aware of any individual who has requested that who works presently with the Ombudsman. The committee can review that, if it wishes, at a later time to make that recommendation. It's totally up to the committee. At this time there is not.

**Mr Mammoliti:** Mr Chair, you know the involvement I've had in this issue from day one. It's certainly been an issue that I feel strongly about, not only because I'm hearing complaints in my constituency office, but I'm hearing them down here as well. I'm hearing from staff members at the Ombudsman's office as well. Again, I'd like to make whatever recommendations possible at this point to issue a letter to the staff at the Ombudsman's office, letting them know that we're conducting this, and that if they'd like to be a witness, this is the level that perhaps they could be heard at.



**The Chair:** Is that a motion you're putting on the floor?

**Mr Stephen Owens (Scarborough Centre):** I think, with respect to my colleague, that I'm sure the staff of the Ombudsman's office is acutely aware of the committee's review. I think that by sending correspondence like that, it may be viewed as a provocative measure rather than an invitation. I think some level of diplomacy is called for at this point, so I would quietly and humbly suggest that we wait to see how this situation plays itself out.

1020

**Mr Curling:** I fully agree with Mr Owens. I think if we have the Ombudsman herself here, that is quite sufficient and any other investigation and research could be conducted in a different manner. My question, though, I want to put to the clerk: I notice under boards and agencies on that proposed witness list you have Catherine Frazee as chair of the Ontario Human Rights Commission. I presume you really want the chair of the Ontario Human Rights Commission to come before us, not Catherine Frazee.

**Clerk of the Committee:** That's correct. We bring the—

**Mr Curling:** Because Catherine Frazee would be no longer by the time—

**Clerk of the Committee:** Yes. When the committee chose that list at the time, we had to address the letter to someone.

**Mr Curling:** Yes, but in the meantime, though—yes, we would have the chair of the Workers' Compensation Board.

**Clerk of the Committee:** Yes, that is correct.

**Mr Curling:** I think she'll be there then. I think she's being put before the standing committee on government agencies now to be approved, hopefully.

**Mr Mammoliti:** One of my concerns with the Ombudsman's office is the internal dealings and goings on within that office. I'd like to again talk a little bit about appropriate witnesses to let us know what's going on in the Ombudsman's office. I don't see a list of individuals who work in that office and I certainly would like to do whatever we can to get a couple—two or three, however many it would take—to give us an indication of what's going on in the Ombudsman's office. Those complaints are legitimate and I certainly would like to deal with that.

**The Chair:** Thank you very much, Mr Mammoliti. Although I think your comments and ideas are very good, I would ask that you hold them off until we are under the review and possibly hold them till the end, if you wouldn't mind.

**Mr Owens:** I think your comments address my concern, but I think in light of the volatility of our relationship with the Ombudsman's office, again I would suggest they would view this as a provocative act rather than as a consultative act. Until we work some magic around the escalating of this problem that seems to have appeared in the media this morning, we should just hold off, but keep Mr Mammoliti's concerns listed. Once we enlist the coopera-

tion of the Ombudsman's office, then we can take a look at how we can accommodate those wishes.

**Mr David Ramsay (Timiskaming):** I would just like to put this out. It's what I would feel might be helpful as a point of clarification. It's my understanding that the mandate of this committee in these two weeks in the summer, and also as we're going to continue our work in the sessional days of the fall, is a review of the legislation on the Ombudsman; it's not a review of the office per se or of this specific operation, but they were looking at the legislation.

It's my understanding that the legislation was first introduced and passed in this province in 1975. Therefore, in that regard it's fairly old legislation and as legislators it's, I think, our mandate always to make sure that we recommend to the government of the day to bring the legislation up to date. We, today, do not even anticipate what possible changes, if any, might be made in our recommendations to government as to changes. I just want to make it clear that we're not looking at the particular office right now and how that office operates, but what we want to do is to make sure that the Ombudsman Act of the province of Ontario reflects the realities of the 1990s.

**The Chair:** For your benefit, Mr Ramsay, and for the other members' benefit, I will read the terms of reference that were unanimously supported by this committee:

"That the standing committee on the Ombudsman undertake a comprehensive review of the Office of the Ombudsman which should include but not be limited to:

"—An examination of all aspects of the Ombudsman Act.

"—The scope of the Ombudsman's jurisdiction.

"—The performance of the Office of the Ombudsman in the exercise of its powers and functions.

"—The adequacy of the resources of the Office of the Ombudsman to perform its various functions.

"—The relationship of the Office of the Ombudsman to other organizations involved in hearing complaints about government actions.

"—The mandate of and role to be played by the standing committee on the Ombudsman;

"And that the committee hold hearings and consult as it deems appropriate and that it complete and report the results of its review by December 15, 1992."

**Mr Bill Murdoch (Grey):** Here we are. We are sort of beating around the bush and wanting the Ombudsman people to show up here. Now, that's fine, I have no problem with that, but I think the one who isn't showing up obviously is the Ombudsman herself. I think we had, as you said, a subcommittee yesterday and we talked a bit about this and I understood at that time that there was some concern that she might write a report.

The report was already done yesterday, because here it is right here. Since we're here all together I think we'd better talk about this, because we're not interviewing people today. Let's cut the bull and get somewhere in what we're doing here. I've been on this committee now for two years and all we've done is go around in circles with the Ombudsman. She says in here that she's arm's length from the rest of us. If that's the case, then obviously she thinks



she's a judge. I think that's what we're going to have this hearing all about: to find out where we really sit in the whole picture also.

Now we get this report. It's slapped right in our face and I'm really upset about that and I think we're going to have to talk about this report before we do anything else, because maybe our whole review is redundant. I'm not here to waste ratepayers' time and money and my time to find out and get a report sent to us like this. I think this is a kick in our face and I want some concerns and some of the other people to talk about this. I am upset with this. Where do we go from here?

What I see this trying to do is trying to make these hearings look like they're not worth anything. Just like Mr Ramsay said, though, we're not here to judge the Ombudsman; we're here to do a review of what's been going on. It hasn't been done for 17 years. Do we need a committee? If the Ombudsman's going to be at arm's length from the Legislature then maybe we don't need our committee, but we're here to find out all this.

To send out a report, spend the taxpayers' money—now, I don't know how much it cost, but the reports in the paper said \$25,000. I can imagine it's a lot more than that. The graphic artist probably cost \$25,000 just for the cover of this. So let's cut to the bone and let's get to some of the real problems we're having here.

**The Chair:** That is something I was going to mention, that the special report by the Ombudsman was tabled yesterday afternoon. I would appreciate it if all members could take time to read it, review it and then I'm sure we will deal with it.

**Mr Curling:** Mr Chairman.

**The Chair:** Just one moment please, Mr Curling. Ms Haeck.

**Ms Christel Haeck (St Catharines-Brock):** I'm just going to follow up on something that Mr Murdoch has raised. The cost of this is reputed to be something like \$25,000. Is that the printing of this?

**Mr Murdoch:** That's what we heard in reading the paper, if you can believe the paper.

**Ms Haeck:** I guess the question I have, since something like this obviously didn't happen overnight, is that I would really like to have an idea of how the costs for this were approved or whether moneys were removed from the actual service side of the ledger to print this. I would have some concerns as to how this ended up happening without maybe going through the Board of Internal Economy of some other mechanisms for monitoring these kinds of costs. It does leave an awful lot of questions.

**The Chair:** Can we discuss this, Ms Haeck, once all the members have had the opportunity to read the report, please?

**Ms Haeck:** Absolutely. It doesn't require immediate response, but I just wanted to put my questions and concerns on the record.

**Mr Murdoch:** I know everybody hasn't read it. I haven't got through the whole thing. Sorry to jump in, Mark, but this is the crux of our whole meeting. This is the

crux of this whole committee. We've been going on here, as I said, for two years since I've been elected and some of the other guys have been here and this is the crux of what's happened. Right in here—I'm even appalled to say that the Ombudsman says that none of us has approached her. What are we supposed to do, go behind each other's back and say, "Well, I had this problem, that problem"? That's what we're trying to stop. So I think we should go through the thing clause-by-clause, as we call it, and look at it, because I think it's what is going to happen for the next two weeks. This thing has a lot to do with it.

**Mr Curling:** I think it is appropriate that we examine the report. I'm anxious to get to it. Just going back to the proposed witness list, I would like to add and to tell the clerk, yourself and the committee that I think the employment equity commissioner should be one of the persons to appear before us. Is it there? Employment equity commissioner?

**Clerk of the Committee:** Whatever the list is, is there. If it's not on the list, they were not invited.

1030

**The Chair:** We can include them, Mr Curling.

**Clerk of the Committee:** For next September, if you wish, yes.

**Mr Mammoliti:** Somewhere along the line we lost track of what I was talking about in terms of witnesses and the agenda. I'm very persistent and I'm going to continue being persistent in this particular case, because I'd like to talk to some of the people who work in the Ombudsman's office, and this is the forum that I'd like to do it in.

I'd like to get an indication from the committee as to what you want to do with this, because if not I'm just going to continue putting motion after motion on this case.

Interjection.

**Mr Mammoliti:** No, what was said was, "We'll talk about it later." I'd like an indication today of when this could happen. If it's going to happen in September, that's fine, but I still would like a separate invitation to go out to everybody who works in the Ombudsman's office to let them know that we're looking for witnesses to answer questions in terms of any problems that exist in the Ombudsman's office and that this is the forum to answer the questions. It's been done before in committee and I'd like to see it done again, please.

Maybe that should be in the form of a motion, Mr Chair.

**The Chair:** Are you putting the motion forward, Mr Mammoliti?

**Mr Mammoliti:** Yes, Mr Chair, that would be my motion.

**The Chair:** Can you read that out again, please?

**Mr Mammoliti:** That the committee send it out to all staff in the Ombudsman's office to let them know of the review and investigation and to invite them to this committee to answer any of our questions in reference to the goings-on in the Ombudsman's office.

**The Chair:** Thank you very much, Mr Mammoliti.



We have a motion by Mr Mammoliti to invite all staff and office people of the Ombudsman's office—

**Mr Mammoliti:** Not all; the ones who are interested, Mr Chair.

**The Chair:** —ones who are interested, to appear before us as witnesses. Can I have comments or questions, please?

**Mr Ramsay:** I would like to comment about this. As one of the members of this committee I'm equally concerned about the Office of the Ombudsman and how it works, and I'd certainly defend for the Ombudsman and for the province of Ontario the idea that the Ombudsman's office has to be independent of government and at arm's length.

Unfortunately, in the last little while, as evidenced by today's press clippings, it is now public that there have been some disagreements between this committee representing the Legislature of Ontario and the Ombudsman's office, and that's really unfortunate.

I think it should be the role of this committee to try to heal those wounds. We want to work cooperatively with the Ombudsman, because the Ombudsman's role in Ontario is very important. In fact I'm sure most of my colleagues do as I do: refer cases that we are frustrated with to the Ombudsman's office.

I support the Ombudsman's office and look upon it as assistance to the work I do in my constituency. So I certainly am a great supporter of that. I'm very concerned that this motion would be perceived as a provocative act, if you will, almost an attack upon the Office of the Ombudsman, and I do not feel that it's conducive to that healing process that I think needs to happen right now.

We've had our annual review, we've made comments on last year's performance of the Office of the Ombudsman. My sense now is that we're moving on to the future. We want to make sure that the Office of the Ombudsman for the province of Ontario is the best in the world. We think we can probably recommend some improvements to make it so. We have a good Ombudsman, an excellent Ombudsman, today in Ontario and a well functioning office—not to say, like anything we do, that we cannot make improvements, but I just am very concerned that this would be perceived as a provocative act. I would be voting against this motion.

**The Chair:** Any further comments or questions?

**Mr Noel Duignan (Halton North):** I couldn't agree more with my colleague David across the way. I feel that would be considered a provocative act. It would be like subpoenaing witnesses to come before this committee. I too will not be supporting this motion.

**The Chair:** Any further comments or questions?

**Mr Anthony Perruzza (Downsview):** I guess if I was pushed to the limit I'd support my colleague's motion that's before us; however, I would do it reluctantly and I would issue a caution. I agree that in this particular case the Office of the Ombudsman has to be beyond reproach and it has to be something separate and apart from government.

I would also agree—and I apologize because this is my first meeting and I don't have as much experience with the

workings of this committee and with the office as many of you around this table—that sidestepping the process and reaching into that agency in this way and summoning people to appear before this committee would in many ways disrupt a relationship that this office should have with government and would disrupt the workings of the office directly. I think we have to tread softly.

I regret some of the comments that I've heard around this table as well in terms of accountability, because I believe that every government agency, board, commission, and every department of government should in some way be held accountable to the elected officers of the government. If this committee hasn't been able to work out a process whereby a mechanism is developed to in some way hold the Office of the Ombudsman accountable—essentially, I guess what I'm saying is for the Office of the Ombudsman to provide to the members of this committee and the members of the Legislature some information on the workings of the office and reassurances that the office is working well—then that in some ways makes me nervous.

So I would urge my colleague to take back the motion, because I don't think that it's a worthwhile motion at this time. I suspect it may be at some point down the road. If the situation deteriorates, then maybe it at that time would be an appropriate motion, but I would try other venues at this time.

**Mr Curling:** Over the last two years I've served on this committee, and I think the committee has made efforts in order to understand the process and the accountability of the Ombudsman. I feel that there is resistance or lack of understanding, let's say, on both sides, saying it rather diplomatically. I feel that we as a committee have not been successful in impressing upon the Ombudsman that there's an accountability process, and we, as elected individuals who are accountable to the people, have not been able to get a full understanding of this process.

I feel the motion that was put forward is not a motion that I can support either. I don't think we're there to investigate the Ombudsman herself. By using her staff she's accountable to the Legislature, to the Speaker. This committee and legislation has stated we represent the Speaker in that sense, and all the reports come here. I feel that a better approach would be to call the Speaker here and get a full understanding of how this process works, because it seems to me that somehow we're just not getting through to the Ombudsman. I'm not saying that from my point of view; it's from her report, which said that she has not got an understanding, she's not able to convince us in some respect. So I cannot support that motion. I wouldn't like to go in that direction. I'd like to go in the direction where we have a session, whether you want to call a closed session or not, with the Speaker and the Ombudsman meeting.

**The Chair:** Mr Curling, for your information the Speaker is appearing before us at 3 o'clock this afternoon.

**Mr Curling:** Yes, I know, but I was saying almost as an urgency, an immediacy. I don't know if he's coming in the next session. I think we can hardly proceed, you know.

**Mr Murdoch:** I think it's my understanding that she has been asked to appear here—



**The Chair:** Yes, she has.

**Mr Murdoch:** —and she has refused to this date. So I think Mr Mammoliti's motion has some merit. I would rather see it tabled at this time also, but if I were pressed to the point I think I would support it just on the grounds that I think we've tried. I know everybody around here keeps saying, "We don't want to be adversarial," and things like this, but we've tried. We've had the Ombudsman here to see us and we've talked to her about these things.

I totally agree that her decisions can't be tampered with, but is there not a process that somebody's accountable to somebody, and is this committee not set up to see that her office is accountable to the Legislature? I thought that's why we're here and that this is what we were going to try to find out.

There comes a point, though, that you can only be so nice for so long and I think we're almost getting to that point. I think that's why George's motion is coming. It's from frustration. I would rather see it tabled at this time, but if push comes to shove, I would support it because I think somewhere along the line we're going to have to take the initiative and get something going here.

1040

**Mr Mammoliti:** Thank you, Mr Murdoch.

**Mr Murdoch:** We've been trying. I've been here since this committee started and, boy, we're really getting frustrated, and with this report coming out, it frustrates even worse. I think we're going to have to start taking the bull by the horns soon and do something. We can talk around here all we want and be nice and say they are her decisions and this kind of stuff, but somewhere along the line we're going to have to start getting a little tougher and do something.

**The Chair:** Mr Murdoch, just a point of clarification for our research: As Mr Mammoliti's motion stated, do you want to invite the staff or do you want to get clarification from the Ombudsman on the special report?

**Mr Murdoch:** No, I was talking about Mr Mammoliti's motion. I just said I would prefer to see it tabled at this point, at least until we go over this report. As I said, at some time we may have to get tough here and I think that's what his motion is doing. As I said, if it's pushed to a vote, I'll vote for it.

**Mr Mammoliti:** In speaking directly to some of the staff members who at this particular time didn't want to be mentioned—let's be perfectly honest and frank with you—there are some problems in the office and I want some questions answered. As Mr Murdoch says, the Ombudsman doesn't want to come in front of us. She claims she doesn't have to. How are my questions going to be answered in terms of what's happening in that office if there isn't anybody here to answer those questions?

I look at the agenda and I don't see anybody directly on staff who's going to be in front of us, somebody who's working beneath the Ombudsman, somebody who works on staff, perhaps one or more, to answer some of those questions. I cannot properly, and I feel this way, carry out my duties as a member of this committee if my questions

aren't answered. That's the reason for the motion. The reason for the motion is to answer some questions.

It's not to say that my colleagues are not right, and I understand what they're saying in terms of diplomacy and in terms of all of that, but I agree with Mr Murdoch, my colleague across, that we have tried for almost two years to get through. I'm frustrated. I'd like to hear from the people who have been complaining, frankly, and I'd like to give them the opportunity to come in front of this committee. That's the reason for the motion. If we don't give them that opportunity, then are questions answered and is this whole process worthwhile?

If the answer is no to my motion, then I would go back to my colleague Mr Murdoch again and his question in terms of wasting the ratepayers' money. I'd like some questions answered and I'd like to ask the people who work there, the people who have the complaints, because right now there are a lot of complaints coming out of that office, not only from the people who have a complaint with government, but the people who work for government are complaining as well. I'd like to ask them some questions.

**Mr Duignan:** Very briefly, I think we've gone around this question long enough and I would like to get on with the briefing by legal counsel to this committee. Therefore, I'm going to call the question.

**Mr Owens:** On a point of order, Mr Chair: I believe I heard Mr Murdoch move a motion of referral.

**Mr Murdoch:** No. To clarify that, I prefer it to be tabled, but I think it's George's motion and I'll leave it up to him.

**Mr Owens:** So it's an interpretation problem.

**Mr Perruzza:** On a point of order, Mr Chair: I don't believe you can speak to a motion and then call the question on the motion afterwards.

Interjections.

**Mr Duignan:** The question is called.

**The Chair:** All those in favour of Mr Mammoliti's motion, please show? All those opposed please show?

Motion negatived.

**Mr Owens:** As an end note to this discussion, I think Mr Mammoliti's point should not be lost, that there may be some difficulties in the office. I'm a little bit nervous about having staff come in and—

**Mr Curling:** Are we going to debate the motion again? It's all been done.

**Mr Owens:** Pardon me?

**Mr Curling:** It's been done. It's over.

**Mr Owens:** It is in terms of Mr Mammoliti's concerns that there should be some method for staff to express their concerns.

**The Chair:** If Mr Mammoliti wishes, Mr Mammoliti can forward that to the subcommittee to review.

**Mr Mammoliti:** On a point of clarification, Mr Chair: If some staff members come forward at this point and tell the Chair and the clerk's office that they would like to appear, will we get a chance to talk about this, because I



would certainly be one to recommend that they do. I hope they do get put on the list if they choose to come forward.

**The Chair:** The subcommittee would review that request, obviously.

Going on with our agenda, this morning we have a briefing by our legal counsel, Paul Murray. I would ask that you leave your comments and questions till Mr Murray is done. Mr Murray, when you feel comfortable, you can have the floor. Please feel free to take as much time as you need.

**Mr Paul Murray:** I think all the members have been provided with a copy of some briefing notes. If you could turn to those now, it would probably be easier to follow along with those. I'm going to actually stay fairly close to this and maybe add a few comments as I go through them.

This is what they look like. If anyone happens not to have them, I have two extra copies of them here.

**The Vice-Chair (Ms Christel Haeck):** Perhaps all members have their briefing notes, as requested by Mr Murray. If anyone needs any additional briefing notes, Franco or Mr Murray can accommodate. Paul, we'll turn it over to you.

**Mr Murray:** As I said, I'll stay fairly close to these. If you turn to the second page, not the covering page, I'm going to go through pages 2, 3, 4 and 5.

Basically, the briefing notes cover four different subjects. The first is a brief description of the purpose of the review, which we've heard a bit about because we've had the terms of reference read out today.

Then there's some background on the historical context of this review, tracing some of the developments since the act was first enacted in 1975.

Then there is a short description of the manner in which the hearings have been organized and who has been invited.

Then on pages 4 and 5, there's a summary of issues under review, and this list of issues are issues that have been raised over the course of the last 17 years by different ombudsmen and different individuals and agencies which have been involved in commenting on the Ombudsman Act.

I'll go back and start at the beginning with the purpose of the review. As I indicated, the terms of reference have been read out, but just briefly to restate them, the purpose of this review is to assess how effective the Ombudsman Act and the Office of the Ombudsman are in achieving the objectives set for them. It's to receive, consider and respond to recommendations made concerning the need to make changes to the act and to the operations of the office, with the overall objective of ensuring that the function of addressing unfairness in government administration, which is entrusted to the Office of the Ombudsman, is performed in an effective and efficient manner.

1050

The background and history which provides the context for this review: There have been a number of important developments over the last 17 years. The act was first enacted in 1975. It hasn't been amended since 1975, although there have been a number of recommendations by

the different ombudsmen who have held the office, and by the different standing committees, as well as others.

The initial intention for the first Ombudsman, who was Arthur Maloney, was to provide a blueprint for the Office of the Ombudsman after the first year of operation. This was intended to be a very detailed blueprint as to how the service delivery would be handled, whether there were any inadequacies or problems with the Ombudsman Act: a very broad review.

This Blueprint for the Office of the Ombudsman, under this title, was completed in 1979, towards the end of Arthur Maloney's tenure as the Ombudsman, and is a very lengthy, 400-page review of the Office of the Ombudsman and the Ombudsman Act, and included a very long list of amendments to the act, none of which, to this point, has been implemented, and a number which subsequent ombudsmen have commented on. This blueprint, as well as other recommendations after that, form the basis of the issues I'm going to go through later, once the committee has invited comments from the public.

As I indicated, successive ombudsmen have pressed for amendments to the act on a range of issues related to the powers and procedures of the Ombudsman, and have constantly been supported by the standing committee in making these recommendations. This is discussed in the committee's 19th report released earlier this spring.

In 1986, the Ombudsman at that time, Dr Hill, specifically proposed that the Ombudsman's jurisdiction be expanded to include the children's aid societies, public hospitals and the Ontario new home warranty program. The previous standing committee held hearings on that and recommended against expansion. This committee has reviewed that. In the Ombudsman's most recent report, she has a section in which a number of possible areas for expansion of jurisdiction are included.

**Mr Murdoch:** Which report is that?

**Mr Murray:** The Ombudsman's annual report.

**Mr Murdoch:** Not the special one.

**Mr Murray:** Not the special one.

**Mr Murdoch:** I just wanted to make sure.

**Mr Murray:** Yes, sorry; it's the Ombudsman's most recent annual report, which was released in the spring. In the Ombudsman's most recent annual report, there are six or seven different areas that are raised as areas possibly for expansion of the Ombudsman's jurisdiction, including the areas we've just mentioned, as well as the actions and decisions of municipalities, the actions and decisions of school boards, as well as others.

In September 1989, there was a review of Ontario's regulatory agencies undertaken by Robert Macaulay. This was a review of the manner in which administrative tribunals and government agencies generally operate. Included in this report, because of the Ombudsman's role in reviewing the actions and decisions of government agencies, is a section on the appropriate role of the Ombudsman in reviewing agencies and tribunals.

A number of recommendations are made in the Macaulay report. In particular, the report notes the need for this committee to establish rules to govern how the Ombudsman is



to carry out her or his powers in reviewing government agencies. Those recommendations have not yet been considered by a legislative committee, and those are some of the issues we're hoping to receive comments from the invited public on.

In November 1989 the Ontario government of the time introduced Bill 80, An Act to amend the Ombudsman Act and the Child and Family Services Act, 1984. This bill, Bill 80, included a long list of amendments, some of which would have altered the Ombudsman's jurisdiction by narrowing it, and a number of other amendments which would have related to her power to make and submit reports to the Legislature, as well as other issues. It addressed, at least in a number of the amendments, a number of concerns that had been voiced by different ombudsmen over the previous 14 years. Some of the amendments, to be clear, weren't supported by the Ombudsman of the day, and there was some discussion about that. In any event, this bill, which might have addressed some of the concerns which had arisen over the previous 14 years, did not proceed past first reading, so the amendments that had been pursued were not implemented.

Generally speaking, in the last 17 years much has changed since the Ombudsman Act was first enacted. There are a host of new government agencies subject to the Ombudsman's jurisdiction. The Canadian Charter of Rights and Freedoms has altered in a number of ways the manner in which the public's rights are protected, and there has been a considerable growth in government, all of which, this committee has decided in its 19th report, create a need to explore whether these place new demands on the Office of the Ombudsman and whether the Ombudsman's office has the ability at present to adequately respond to these new demands.

This review, as seen by the committee in its 19th report, will provide a forum for the public to comment on achievements of the Office of the Ombudsman and to make recommendations on how the Ombudsman's functions can more effectively be performed. In responding to these comments and developments the committee's object will be to bring the Ombudsman Act up to date and to ensure that the Ombudsman has the powers and fulfils the functions appropriate to today.

So that's the historical context. All of those developments have given rise to a number of outstanding issues in terms of the Ombudsman Act and the Ombudsman's powers and procedures which, in the final part I'm going to brief you on, are the issues that we have set out and which we have sent, in the form of questions, to witnesses and invited public comment on.

Just before I get to that, in terms of the organization of the hearings, which some of the members may not be as familiar with as others, the committee made a recommendation in its report, released on May 28, that this review be conducted. On July 23 the Legislature passed a motion authorizing the committee to conduct these hearings. Invitations were mailed during the week of July 27, 1992. As you know, there are only two weeks of hearings, starting today. We've indicated to witnesses that because of the short period of notice because of the circumstances sur-

rounding the legislative schedule earlier this spring we will continue to arrange to hear further from witnesses in the fall as necessary and we'll continue to receive written submissions after the completion of these two weeks of hearings.

The committee's expressed hope is to hear from a range of officials and individuals about their experiences in dealing with the office over the past 17 years. There has been a range of invitations sent out to obtain comment from the public. There has been a wide public advertisement of the committee's hearings inviting participation from the public. As well, the committee has invited the Ombudsman to appear before the committee and to provide her views on the need for improvements to the act and to the Office of the Ombudsman. Former ombudsmen have been invited. Expert witnesses, professors who have written in this area, have been invited. The chairs of government boards and agencies frequently reviewed by the Ombudsman have been asked to prepare any comments they might have, as well as other ministries and government agencies.

In addition, we have attempted to identify and invite organizations potentially affected by the expansion of the Ombudsman's office in terms of the areas mentioned in her most recent annual report. As well, a number of groups have been invited to speak concerning the accessibility of the Ombudsman's services to the broad public. As well, the committee has contacted other provincial ombudsmen asking for their comments on some of the issues under consideration.

1100

To get into some of the issues for witnesses—just in terms of the invitations to witnesses—they have been given a list of questions that the committee prepared, which relates to a number of issues that have been raised over the course of the past 17 years as requiring attention, issues raised by previous ombudsmen and different reviews that have been undertaken.

I'll just go through these fairly briefly. It's pages 4 and 5 of your briefing notes. I've arranged these issues under some general headings, which there is no particular magic in. Just at the beginning, some general introductory issues are just to identify what the appropriate role and function of the office are in light of developments over the past 17 years. In that sense, this is a very comprehensive review.

There's also the general question that has arisen as to the systemic reviews of agencies. For example, the Ombudsman recently completed a review of the Ontario Human Rights Commission, which she discusses in her most recent annual report. An issue to be considered is whether these reviews should be conducted by the Ombudsman, what role they should play in the work of the Ombudsman and what procedure should be followed. Clearly it's a newer area for the Ombudsman to be getting into, although previous ombudsmen have gotten into these areas and a number of ombudsmen in other provinces have.

Another issue which has been raised by the Ombudsman in the most recent annual report is whether the title of Ombudsman should be changed so that it is gender-neutral both in meaning and in connotation, and what an appropriate title might be.



Under expansion of jurisdiction, there are a number of issues. Some of the issues to consider are whether to include some of the governmental organizations that I've mentioned that are not presently covered by the act: municipalities, children's aid societies, public hospitals, the Ontario New Home Warranty Program, boards of education, municipally administered social assistance and the Law Society of Upper Canada.

As well, the committee needs to consider whether any clarification of the Ombudsman's current jurisdiction is needed because there have been issues over the past 17 years as to whether certain agencies were within the Ombudsman's jurisdiction.

As well, the Ombudsman has raised, in the most recent report, whether the issue of alternative methods of providing ombudsmen's services—for example, the use of specialized ombudsmen—should be considered.

There are a number of issues that have been raised over the years concerning the complaints review process, the Ombudsman's investigation and reporting concerning cases. These issues include whether the Ombudsman's existing investigative powers and procedures are adequate for the job to be performed, whether to allow the Ombudsman to comment publicly on a particular case when it is in the public interest and whether to require the Ombudsman to conduct educational programs to inform members of the public of the Ombudsman's functions.

As well, the question of the extent to which the Ombudsman should involve herself or himself in facilitating the resolution of a complaint should be considered, and the extent to which the Ombudsman should continue to be involved in cases once he or she has reported to the Legislature is an issue on which we've invited comment.

The next area we've invited comment on are the roles of the assembly and the committee, the accountability mechanisms and other functions, which clearly, as in discussion earlier today, are issues that have presented questions over the course of the past 17 years. These issues include whether there are any areas in which the committee should establish rules for the guidance of the Ombudsman, whether the procedures followed by the committee in reviewing recommendation-denied cases are adequate, whether the committee should continue to receive and review complaints from individuals concerning the Ombudsman's handling of their complaints, whether the procedures in place to review the Ombudsman's finances are adequate, and what information should be conveyed in the Ombudsman's annual reports to the Legislature.

The final topic on which we've invited comment is the general performance of the Office of the Ombudsman over the past 17 years. These include questions about public satisfaction with the service provided, the awareness and accessibility of the services, the effectiveness of the complaints review process, developments in the size and nature of the workload since 1975 and the adequacy and management of resources. These are all issues that relate to concerns that have been raised over the past 17 years and are important, in the committee's view, to ensuring that the Ombudsman's function is performed in an effective and

efficient manner and on which witnesses have been invited to comment.

That completes my briefing, unless there are questions on the briefing.

**The Chair:** Thank you very much, Mr Murray. Any comments or questions on the brief?

**Mr Ramsay:** I'd just like to ask Mr Murray: The issues that he has outlined for us this morning, would that be a fair summary of recommendations that have come down over time from the Maloney blueprint, the Macaulay report and the Bill 80 recommendations for amendments?

**Mr Murray:** Yes, the issues that I've just gone through are actually a bit of a condensed summary of those recommendations. It doesn't include all of the specific ones. The list of questions sent out to witnesses in which we've invited comments is more extensive and a more complete summary of the recommendations which have been made over the course of those years in those reports.

**Mr Duignan:** Just going back to page 2, I was wondering if you could make available to the members of the committee Bill 80 from 1989 and a copy of the September 1989 review and the recommendations. I'm wondering, could they be made available to the committee?

**Mr Murray:** Yes, they can.

**Mr Murdoch:** This did say "confidential" on here. Now it isn't any more, I assume?

**Interjection:** We've just been talking about the document.

**Mr Murdoch:** I know. We just want to make sure we don't cause any problems, but I think—

**Mr Owens:** It's just gone across TVO.

**Mr Murdoch:** Maybe we should send a copy of this to the Ombudsman now.

**Mr Curling:** Slip it under her door.

**Mr Murdoch:** Yes, slip it under her door at 9 o'clock.

It says right in here, are we as a committee interfering with the Ombudsman's independence and stuff. We're going to address all this. As I say, I'm still upset that we're being treated the way we are by that office, and again no one's ever tried to say that we want to get into her decisions. I think we've stressed that so many times, that this is all going to be well and done, but is it going to mean anything?

I don't know where we'd find that out, either. Can anybody answer me that? Where are we going to go? We're going to spend a lot of money here on this committee to do this. We're not going to do it in two weeks, that's obvious, because of the list of people whom we're going to try to talk to, so it's going to go on when we come back. I think we've got to find out, are we doing this all for naught?

**Mr Murray:** Just in terms of the two points, I guess, you raised, one that we only have two weeks now, but as I tried to indicate in the briefing note, the committee has made it clear to witnesses in inviting them that there's flexibility on the part of the committee and it invites them, if there's not sufficient time now, to make a request to



appear before the committee in the fall and to prepare written submissions at any point.

Certainly it's up to the committee as to how long it wants to extend the process of hearing from the public. In terms of reminding you, it has been 17 years, so in some senses clearly there's no rush to get this done in two weeks and the committee's made it clear to the public we've invited that that's not the case.

In terms of the issue as to what will happen with the committee's report: As you know, this is a review that the committee is undertaking and will report to the Legislature on, and then of course it's up to the Legislature as to how to act on any recommendations the committee may make in terms of changes to the act.

**The Chair:** Just to clarify that for you, Mr Murdoch, we have a motion and been ordered by the Legislative Assembly of Ontario to do a review and to report back to the assembly.

1110

**Mr Mammoliti:** Mr Chair, forgive me for being so naïve, I guess, but I certainly would like to know how much it costs to run the Ombudsman's office. At this point I'd request that information, as well as the number of individuals who work in the Ombudsman's office, the classifications, and the hourly wage, if that, or salaries.

I'm going to agree again with Mr Murdoch and say that I'm frustrated as well by knowing that the Ombudsman doesn't want to come and talk to us. I'd like to ask whether or not we can subpoena somebody to come and talk to us, Mr Chair, because I certainly would have some questions for the Ombudsman in this case. If the answer's yes, I think you can assume what I'm going to say next.

**The Chair:** Just before I turn that over to legal counsel, there is such a warrant: It's called a Speaker's warrant.

**Mr Mammoliti:** Right on. Okay.

**The Chair:** Now I will turn the chair over to Mr Murray to answer Mr Mammoliti's question about expenditures.

**Mr Murray:** One of the issues you've raised is wages that are paid to the individuals and whatever interest there may be in that. Just to clarify so you're aware, the Ombudsman Act provides, subject to the approval of the Lieutenant Governor in Council, that the Ombudsman may employ such employees as are considered necessary and may determine their salary and remuneration and terms and conditions of employment. The act does make it clear that, certainly in terms of the day-to-day operations, day-to-day decisions of the Ombudsman's office, the Ombudsman is independent in making those decisions. I think the committee's interest would be in more general questions as to the overall performance of the functions of the Ombudsman.

**Mr Mammoliti:** With all due respect—

**The Chair:** Mr Mammoliti, please.

**Mr Mammoliti:** I'm sorry, Mr Chair. We're taking blows in the media telling us it's costing us \$25,000 to do this review. If I do a review, I like to be thorough; I like to know my information, and that's why I'm asking for this

information. I'd like to know how much it costs to run the Ombudsman's office, how many people are employed there and what their functions are, as well as their wage.

**The Chair:** If you look at the expenditures for the 1991-92 fiscal year, you will get that information, but I'm sure we can ask the clerk to get that.

**Mr Mammoliti:** They're not on the sheet, Mr Chair.

**The Chair:** I'm sure we can get the clerk to issue that to every member, but if you look at the bottom of the fiscal year, total expenditures are \$9,623,852.

**Mr Mammoliti:** Can I get that on a piece of paper?

**The Chair:** Yes, you can. I will ask the clerk to do that.

**Mr Murdoch:** On the subpoena and things like that, we talked about that in the subcommittee yesterday. We looked at that, Mr Mammoliti, and we felt that maybe we're a little above that in this committee. Mr Ramsay dictated a very nice letter to be drawn up and sent to her, and maybe we should stick to that, if we could. I don't know whether that's been done yet; maybe it's redundant because of the report, I don't know.

I am still upset because of this, but I think the Ombudsman looks worse if she doesn't show up here, and for us to force her to come I think would be wrong. If she doesn't want to come, fine. Just as somebody said today, it's nice that we're in open session; we're not trying to hide anything. If somebody doesn't show up here, I don't know if they're trying to hide something or whatever. I don't know why somebody wouldn't show up here when it's a committee to investigate. It's a 17-year investigation; I mean, nothing's been done for 17 years. I think something has to be done to look at it.

So I hope we'll continue with that letter Mr Ramsay helped us dictate yesterday. Is that not possible?

**The Chair:** Mr Murdoch, just for a point of clarification, if you'll allow me, the Ombudsman was invited and I will read the letter out for all members.

**Mr Murdoch:** But also, remember, we were going to send a nice letter back.

**The Chair:** I will refer to that when I'm done. The letter's dated July 27, 1992, addressed to Roberta L. Jamieson, Ombudsman, Office of the Ombudsman, 125 Queen's Park, Toronto, Ontario, M5A 2C7.

"Dear Ms Jamieson:

"Re review of the Office of the Ombudsman.

"In your letter of July 22, 1992, you comment that you have not yet received a reply to your request of June 25, 1992, to appear before the standing committee, and that this meeting must be held before you will consider providing the information that we requested in our letter to you of July 21, 1992.

"With respect to your request to appear before the committee, we take this opportunity to inform you that on July 23, 1992, the Legislature passed a motion which authorizes the committee to hold hearings this August for the purpose of conducting its review of the Office of the Ombudsman. We believe that this would be an appropriate opportunity for you to raise your concerns with the committee's



recommendations, along with other comments and suggestions concerning the need for changes to the Ombudsman Act and to your office's operations. We will shortly be forwarding to you a list of issues on which the committee hopes to receive comments. We will then be meeting to arrange a schedule for witnesses to appear.

"The committee is extremely concerned with your refusal to comply with its recommendations and believes the discussion you suggest may be useful. However, in order for such a meeting to be productive we would ask that you provide a more detailed explanation as to your reasons for choosing not to implement the committee's recommendations. In this respect, we note that you have made a general assertion that compliance with the recommendations would represent an abdication of your responsibility to exercise your discretion independently, but have not indicated why this is the case for each of the various recommendations the committee has made. Some explanation of your concerns with respect to each of the recommendations would be helpful in advance of the meeting.

"While we look forward to meeting with you, we do not agree, as you suggest, that this meeting must be held before the information which we requested in our letter to you of July 21, 1992, is provided. We would note that the information requested relates to the matters which are the subject of the committee's hearings, and it is therefore information which the committee is authorized to send for, since the committee is authorized to send for such persons, papers and things as it considers necessary for its proceedings or deliberations. Therefore, unless you believe that you do not have the power or responsibility to provide the information, we see no reason why the provisions of this information should be delayed.

"We therefore repeat our request for the information. We would also ask that if you do take the position not to provide the information, please indicate to us why you believe that you do not have the power or responsibility to do so.

"Should you have any questions concerning the above, please do not hesitate to call.

"Yours truly, Mark Morrow, MPP."

That is the letter asking her to appear before us. I just read that in for information, Mr Murdoch. The subcommittee should be meeting again at a later date this week to look at Mr Ramsay's idea of a letter to the Ombudsman.

Any further comments or questions?

**Ms Zanana L. Akande (St Andrew-St Patrick):** I have been looking in the standing orders. I'm interested in the terms of reference of this committee and whether there has been some expanded interpretation of them and how that fits in to our request of the Ombudsman. I understand what the concerns are; they have been outlined very well by Mr Murray and we have discussed them previously. But when I look at the standing orders, I don't see a description of what our terms of reference are that would in fact allow us or motivate us—I think "allow" is the word I want—to delve into this to the depth we want to. I'm wanting to know if there exists somewhere some greater or wider description of what our terms of reference are. Orders of reference, I'm sorry.

**The Chair:** Ms Akande, we are not conducting this review under standing orders. We are conducting this review under special orders and motions dated July 23, 1992, and passed by the Legislative Assembly of Ontario.

1120

**Ms Akande:** However, can I just clarify this for myself? The questions we asked, the information we consistently requested, were as a part of the standing committee, and that was under the terms of reference of the committee. It was our dissatisfaction with those responses, am I correct, that led us to that motion?

**The Chair:** Yes, you're correct.

**Ms Akande:** I'm still hoping that there exists somewhere some wider description of the terms of reference which would give us the support that we did in fact ask those questions within the parameters of our mandate, which then led us to do this.

**The Chair:** Thank you very much, Ms Akande. Mr Perruzza.

**Mr Perruzza:** I was just going to refer briefly that there are figures available through other processes to—I'm going to pass, Mr Chair.

**The Chair:** Mr Mammoliti.

**Mr Mammoliti:** Earlier I put in a motion that I wanted staff to come in front and answer some questions. I was told that perhaps we should talk to the person who is accountable for the goings-on in the Ombudsman's office, and now I find out that the person who is accountable doesn't want to come and talk to us. The reason I asked for the—it's not called a subpoena, it's called something else.

**The Chair:** It's called a Speaker's warrant.

**Mr Mammoliti:** I need to know what's going on in that office. Inviting experts is one thing, but to just sit back and accept the fact that the person who is accountable doesn't want to come and talk to the committee to me is not acceptable. I'd like to do whatever I can to get these questions answered, so if that means that I have to put a motion on the floor, then I would, but I'd like to get some feedback before a motion is put on. I don't know how the rest of the people in this committee feel, but I certainly would like to get some questions answered by the people who are accountable.

**The Chair:** Can I just interrupt here for one moment? We are trying to deal with the brief Mr Murray gave us this morning. Is this in context of the—

**Mr Mammoliti:** Sure it is.

**Mr Curling:** On a point of order, Mr Chairman: Ms Akande asked a good procedural question and I think it should be answered. If I understood her correctly, she asked if we have exhausted the standing orders procedures before we move on to the next act, in other words, calling the Ombudsman here. I didn't get an answer to that. Have we exhausted the standing orders procedures on how we get the Ombudsman appearing before us?

**The Chair:** No we haven't, Mr Curling.



**Mr Curling:** The other question she asked, then, is that if we're into the second phase and we've not exhausted the first phase—was I understanding you correctly?

**Ms Akande:** That's a rather liberal interpretation, but then you are a Liberal, Alvin. But thank you. My question was also, do we have a wider interpretation of the orders of reference which would have allowed us to question the very thing which has provoked this investigation?

**The Chair:** The motion that was passed by the Legislative Assembly on July 23 allows us the wider aspects for the terms of reference.

**Mr Curling:** I would say yes, we have. In the last two years we have brought her before us and asked many questions to which we did not get satisfaction, and she said she would not proceed beyond that. The only way we could have done that now is to get an order in the Legislature to say, "If we get the Legislature's direction, will you do that?" That's what we did, isn't that so? That July motion is the one that was bringing her before us, but she has refused to come now.

**Ms Akande:** May I interject just because it relates directly—

**The Chair:** Interjections aren't allowed, Ms Akande.

**Ms Akande:** —and it would be more efficiently discussed this way? What I am saying is that it may well be a part of the result of this exercise or some other one related to it that we more specifically define the orders of reference for this committee so that it will not only serve to inform the committee but will serve to inform the Ombudsman about the parameters of our jurisdiction.

**The Chair:** Can I allow the clerk to respond to that.

**Clerk of the Committee:** Mrs Akande, the standing orders specifically authorize us to review specific reports of the Ombudsman. However, the motion passed by the Legislature is broad and also is based on the fact that we made the recommendation in our annual report to specifically look at certain areas, and it is within that framework that we are reviewing.

**Ms Akande:** I understand.

**Clerk of the Committee:** To answer your second question regarding the process for a Speaker's warrant, the process, in general but not in this particular case, is that the clerk contacts the individual and requests the individual's appearance and it's followed through by a number of letters. That number of letters could be at the discretion of this particular committee.

If the individual refuses, we request again. If the individual refuses, that number must come to a decision of the committee. They must decide if it's appropriate to request a Speaker's warrant from the Speaker. They must be absolutely sure in their minds that there is no other way to follow that route. However, the second letter recommended by both Mr Ramsay and Mr Murdoch is along the process that the committee feels to go forward.

**Ms Akande:** Thank you.

**The Chair:** Thank you very much. Mr Murdoch, please.

**Mr Murdoch:** Just to get back to what Mrs Akande said, we exhausted everything we tried and we were at the point that we needed this review to really find out what our job was. We've had the Ombudsman here. We were told that she had powers. We don't know what they really are and we couldn't figure them out.

We asked, we felt anyway, just some simple things to be brought to our committee so that we could decide what was going on. Hopefully, this review does give us an expanded mandate or takes our whole mandate away from us and we're redundant. That's what it's about. It's hard to tell with what you have there whether this is right or not.

The other thing is, I know we're talking about, to get on to George's—or Mr Mammoliti's—

**Mr Mammoliti:** That's okay, you can call me George.

**Mr Murdoch:** That's fine. Half the time these guys—

**Mr Ramsay:** He's been called worse.

**Mr Murdoch:** Yeah, I've been called worse, George.

About the Speaker's warrant, we're going to have the Speaker here this afternoon. Maybe we should discuss this with the Speaker to see how he feels about it too. I'm wondering if we're just jumping the gun a little bit. We can always do this at any time, but we are going to have the Speaker here and—

**The Chair:** Mr Murdoch, I think Mr Murray has a response for you.

**Mr Murray:** Actually it was a response to Ms Akande.

**The Chair:** Okay. Thank you. Go ahead.

**Mr Murray:** One of the questions you asked was whether or not one of the issues to be considered is changing the committee's standing orders. This committee's terms of reference state that one of the issues to be considered is the mandate of and role to be played by the standing committee on the Ombudsman.

We've expressly stated and we've asked for input from the public, we have asked a number of questions about what the appropriate role of the standing committee is to be. Depending on what response we get to those questions, we could then consider a recommendation re drafting or clarifying the existing standing orders.

**The Chair:** Thank you very much, Mr Murray. Mr Ramsay, please.

**Mr Ramsay:** Mr Chairman, I think it's the view of everybody on this committee that we would want to have the assistance of the Ombudsman in helping us in this review.

When I look back in the correspondence, I know the Ombudsman has asked, in her letter to you, Mr Chair, dated June 25, 1992, that she wants to be permitted to appear before the committee to set out in full detail her position with respect to our report of her annual report and the goings-on of her office in the past year.

I would propose, in the context of our review, that is certainly a legitimate starting place for us to proceed, and if we want to have a good working relationship with the Ombudsman and want to have her assistance in doing this, because we all want to look at how we can improve the

act, I suggest that we invite the Ombudsman—if she can make it within the next two weeks, that would be helpful, but if not, when we return to session—to come before us to set out, as she has requested, her reasons why she disagrees with the report we made, the 19th report of this committee. I'd like to invite her to come before us and talk about that.

**The Chair:** Just before, Mr Ramsay, I ask you if that's a motion, the reason the subcommittee was called yesterday morning was to bring the Ombudsman forward to let her know that we would appreciate that she appear before us for a briefing, and she did not respond to the subcommittee. Now would you want to put that forward as a motion?

**Mr Ramsay:** I would like to, yes.

**The Chair:** Mr Ramsay moves that we ask again the Ombudsman to appear before us. Any comments or questions on the motion?

**Mr Owens:** Just in terms of Mr Ramsay's motion, I think it's a good one. I would ask him, however, if it would not be better if the subcommittee met this afternoon prior to session. Yesterday we all arrived expecting the Ombudsman to be there and we've really had no time to put our minds to how we can broach some kind of a diplomatic solution and how we can encourage the Ombudsman to in fact appear. I fully agree with Mr Ramsay, but I wonder if it would not be better if a subcommittee meeting were held and our minds were put to that issue.

**The Chair:** Can I take that as an amendment to Mr Ramsay's motion?

**Mr Owens:** It's a friendly suggestion.

**Mr Ramsay:** I take it as a friendly suggestion, Mr Chair, and would accept that.

**The Chair:** All three parties are agreeable? Agreed. Okay, thank you. So the subcommittee will meet at, say, 1:45?

**Mr Ramsay:** Or as soon as we finish this morning. How about that?

**Clerk of the Committee:** We can meet as soon as we finish.

**The Chair:** Mr Perruzza moves that the committee adjourn.

**Mr Ramsay:** Since it looks like we'll be adjourning momentarily, I would suggest that the clerk proceed in the subcommittee after adjournment of the committee.

**The Chair:** That's fine, Mr Ramsay. Mr Mammoliti?

**Mr Mammoliti:** I just wanted to ask a question, Mr Chair, before we split.

**Mr Perruzza:** Excuse me, Mr Mammoliti, there's a motion on the floor to adjourn.

**Mr Mammoliti:** Oh, I'm sorry, I thought we had dealt with it.

**The Chair:** Mr Perruzza put a motion on the floor to adjourn. It's a non-debatable motion. All those in favour? All those opposed?

**Mr Owens:** What was the question?

**The Chair:** There was a motion to adjourn put on the floor by Mr Perruzza.

**Mr Mammoliti:** A motion to adjourn?

**The Chair:** Yes. It's a non-debatable motion. All those in favour again, please show. All those opposed?

Motion agreed to.

**The Chair:** We are adjourned until 2 o'clock this afternoon.

The committee recessed at 1133.



## AFTERNOON SITTING

The committee resumed at 1409.

## ROBERT GATEMAN

**The Chair:** I'd like to call the standing committee on the Ombudsman to order. Our first person presenting this afternoon is Mr Gateman.

Mr Gateman, you have a half-hour for your presentation. I would appreciate it if you would leave some time at the end of your presentation so that the members here can ask you some questions or make some comments. Please feel comfortable and begin when you want. Would you please read your name into the record to help our official recordings.

**Mr Robert Gateman:** I thank you, Mr Chairman. My name is Robert Gateman. First of all, let me say it's a pleasure to appear before the committee. I would like to say at the outset that my purpose is not to come here before this committee to Ombudsman-bash. I hope that I will be proffering some constructive suggestions, rather than simply naming names and complaining about a particular case.

I would also like to indicate to this committee that I have advised the Ombudsman of my basic submission before this committee, so this is not an attempt to sort of have a review of a particular case.

I would also like to inform the committee of this particular caveat, that I'm going to be referring to a particular case. The case is an ongoing case, so I'm going to attempt not to name names in the case and make every effort to extract the main element from this particular case. I can also indicate to the committee that the right of confidentiality has been waived in this case so that some of the specifics can come before this committee.

For your information, I am a professor of law and economics and a lawyer in three provinces. I will be discussing a particular complainant. That's as far as I'm going to get into the details of this case.

The issue I'm bringing before the committee is: How should the Ombudsman treat proposals that come from a government organization while an investigation is ongoing? Let me just repeat my issue. The issue is: If a governmental organization gives a proposal, or in this case gives a series of ongoing proposals to the Ombudsman, how is the Ombudsman supposed to treat that proposal?

In this particular case, you will see when I go through the facts that it was an excuse at every stage for the Ombudsman to close the file. I'm going to suggest to you that there's nothing in the act that grants the Ombudsman the authority or the jurisdiction to close down a file, in other words, discontinue an investigation, simply because there is yet another proposal before the Ombudsman.

I propose to go through the facts of the case, the actual complaint, in about two minutes, just to give you a flavour of how this issue came before the Ombudsman. Then I will go through sort of a detailed analysis of what the Ombudsman has or hasn't done on this case, and finally I will make some suggestions.

This complaint occurred as a result of students at Georgian College attempting to get or to exhort the administration of the college to enforce board resolutions. There was a board resolution on the books of Georgian College requiring course evaluations to be done. At the time the students brought this to the administration—senior administration, ie, president, vice-president etc—48% of the teacher evaluations, for example, were not done.

After protracted efforts by the students to get the administration to enforce the board resolutions, they filed for an injunction in the Ontario Court (General Division). Coincidentally, the next working day, those instrumental in the filing of the injunction were ejected from the campus for life without a hearing and their tuition was returned.

Subsequent to that ejection, the administration attempted to deceive both the Minister of Colleges and Universities and the complainant that it was a board decision. It turns out in the end that there never was a board decision to eject these people, it was an administrative decision, but for months and months and months the administration was advising both the complainant and the ministry that it was a board decision.

The administration also attempted to deceive the ministry and the complainant for months that there was, "an existing administrative practice," and I'm referring here now to subsection 17(1) of the Ombudsman Act. The administration was arguing and advising—and the complainant has a letter on file from the Deputy Minister of Colleges and Universities stating that there was an appeal process available to the complainants. There never was an appeal process available to the complainants.

Mr Bruce Hill, who is now the new president of Georgian College as of December 31, 1991, entered into a binding agreement with the complainants to reveal the evidence supporting the college's actions. The complainants have never, ever received any information supporting the college's actions. It's been a year and a third, one year and four months, and the complainant has never received any information on why the complainant was ejected from the campus.

Interestingly, the college still refuses to reveal any information on why the complainant was ejected from the campus. However, interestingly, the college attempted to encourage the Ombudsman to discontinue her investigation. If I can just repeat that point: While the college is attempting to not disclose any information to the complainant, they are attempting to encourage the Ombudsman to discontinue her investigation. That's a bit of an overview of the complaint.

Now, with respect to the Ombudsman herself, a complaint was lodged on June 11, 1991. The allegation was breach of natural justice. It's interesting to note that there were no recommendations from the complainant to the Ombudsman on what to do. It was simply, "Here's the problem." This is important when we get to section 17.



On June 12, there is a letter from the complainant to the Ombudsman saying, "Would you expedite the file, because we would like to get back on campus by September 1991." On June 26, 1991, the Ombudsman writes to the complainant, saying, "We will review your file." Nothing happens for another month.

On July 23, the complainant telephones the Ombudsman, saying: "Would you please expedite our file? We want to be allowed to register for the fall term." The Ombudsman—and this is important for this committee—advises the complainant that she has more important cases to deal with and in fact states that the cases where money is involved with respect to social services are more important than this case. Yet she promises to expedite the file. That was on July 23.

On July 24, the Ombudsman writes a letter to the minister advising that the minister should adhere to his existing administrative policy. We will find out that there is no existing administrative policy. On September 2, 1991, the complainant contacts both the minister and the Ombudsman and advises of the urgency of the matter. Why? Because September 7 was the last day to register for the fall term.

September 23: The complainant has a telephone conversation with the Ombudsman. This is what I will call the first attempt to dissuade the complainant. The complainant advises the Ombudsman that there is no appeal available; there is no appeal available within the college or institution's own practice and procedure manual, and there is no existing proposal from the college. So there is no appeal available, and the Ombudsman knows on September 23, 1991, that there is no existing administrative practice to deal with this matter.

The Ombudsman advises the complainant that the college asks for more time. Now, the importance of this is that it is at the expense of the complainant. The complainant wants to register for September 7, and the Ombudsman is granting more time to the institution, the governmental organization. In the meantime, who loses out? The poor complainant. The Ombudsman also states on September 23, "My view is that the college is scrambling to put something together."

1420

Meanwhile, the students cannot register. The Ombudsman also states at that time that for administrative ease—and this is why I call it dissuasion attempt number one—she wants to close the file. The complainants are dumfounded. This is the first time the complainants start to wonder whether it may be easier to fight the institution than to fight with the Ombudsman.

September 30: The complainant phones the Ombudsman and basically says, "Let's get the investigation moving." This is now September 30; they've missed the September 7 deadline.

October 21: The college comes forward with a proposal. I won't go through the details of the proposal, but one lawyer said, "It would make a first-year law student laugh."

October 28: The Ombudsman serves her notice of intent to investigate. The complaint has been on her desk since June 11.

November 15: There's a letter from the Ombudsman to the complainant—and this is what I call dissuasion attempt number two—attempting to close the file again. I shall read a quote from the letter from the Ombudsman to the complainant. "The appeal which the Ministry of Colleges and Universities is endeavouring to set up, however, would appear to provide a legitimate administrative review—not existing administrative practice—"which it would be appropriate for you to take advantage of."

My suggestion to you is that is a clear recommendation to the complainant to accept this proposal. Interestingly, the Ombudsman hasn't even investigated. The Ombudsman is recommending before she's investigated.

The second quote from that same letter dated November 15, 1991: "It is our view that it would be inappropriate for our office to intervene while this appeal process is available to you. It is therefore our intention to discontinue investigation until you exhaust this appeal. If you are dissatisfied with the outcome, you may advise us and we will reopen your file."

How did the complainants feel about this? First of all, the Ombudsman hadn't even seen the proposal at this stage. When this letter was written on November 15 advising the complainant to accept the proposal and close the file down, the Ombudsman had not even seen the proposal.

Second, the Ombudsman's office hadn't even investigated, had not received the college's file on this matter, yet it was recommending to the complainant that the complainant accept the proposal.

Third, under clause 17(1)(a) of the act, the Ombudsman can, if there is an existing administrative practice which provides an adequate remedy, refuse to investigate. But how can the Ombudsman, with all due respect, conclude that there is an adequate remedy if she hasn't even investigated to find out what the facts are?

So how does the complainant feel? The complainant feels that there was self-serving influence by the Ombudsman on the complainant, that there was a predisposition on the part of the Ombudsman to close the file down for administrative ease as opposed to investigating an action for the little guy against this huge bureaucracy. That was dissuasion attempt number two.

December 13: The top legal adviser within the Ombudsman's office writes what may be described as a cover-your-actions letter to the complainant. In that letter, she advises that under the act, if there is a right of an appeal, an objection or a hearing under clause 14(4)(a), then the Ombudsman can refuse to investigate. She then says in the same letter, "But this is not your case." The complainant read this as an attempt to influence the complainant to close down the file.

But then an officer within the Ombudsman's office went further in that letter of December 13 and stated that under clause 17(1)(a), if there's an existing administrative practice which provides an adequate remedy, they can refuse to close the file. I quote again from that letter:



"The information provided by" the Ombudsman "indicated that the appeal which the ministry was attempting to set up would provide a legitimate administrative remedy"—notice the wording here, "legitimate administrative remedy," not "an existing administrative practice"—"which had been specifically structured to meet your procedural requirements. It was, accordingly, our tentative view that you should avail yourself of this possible remedy before we become further involved."

But the letter of November 15 was not a tentative view; it was saying, "We want to close the file down and we suggest that you accept the proposal." She goes on in that same letter of December 13 and states:

"It is unfortunate that it has taken some time to clarify the status and nature of the appeals/reviews available to you. This is something we are required to do before initiating an investigation, however."

My point to you people is that I don't see in the act where they're required to do this, and I don't see how a proposal is an existing administrative practice.

I see that my time is running short. I might say at this point that the file of the complainant is certainly open to the committee. Anything that is in the file, you're welcome to review. Second, any comments I make or any embellishments you may wish on any technical arguments I will certainly be willing to submit to you in writing, if you want them.

Let me get to the third dissuasion attempt. The third phone call was a couple of weeks ago from the Ombudsman. This is a crucial phone call. The Ombudsman called the complainant and advised the complainant, "In similar cases, complainants don't get much more than what was offered in the proposal." The complainant then said, "Have they obtained things that are not in the proposal, like monetary compensation?" The Ombudsman said yes.

The complainant then said, "Then why are you calling me to close down the file yet a third time?" The Ombudsman stated that they were having difficulty with the college being willing to disclose the information, disclose the file to the Ombudsman. The complainant then said: "That's not my problem. You deal with it. You have the full weight of the law behind you." The Ombudsman stated that it would make for "clearer sailing"—and that's a quote—if the complainant were to accept or reject the proposal.

At that stage the complainant said, "How can I accept or reject the proposal if I don't know what the file is about because you haven't investigated?" The Ombudsman then said, "We do not want to have to subpoena the witnesses," an astounding statement by the Ombudsman. The complainant then said, "Have you ever filed for a search warrant and served the search warrant on a governmental organization?" At that stage the Ombudsman's officer said no; a senior officer in the Ombudsman's office said no.

What is the effect on the complainant of a phone call like this with yet another—this, by the way, is the second proposal to the complainant, again not seen by the Ombudsman. The complainant feels, again, self-serving influence on the complainant to close the file.

1430

Now, what are the suggestions on how to deal with this? I won't waste too much time, but I refer the committee to sections 14 and 17. A major point I want to make is section 14.

Subsection 14(1) establishes the function of the Ombudsman. Notice the wording of subsection 14(1). Subsection 14(1) says, "The function of the Ombudsman is to investigate." I cannot repeat that word enough. It says, "The function of the Ombudsman is to investigate." It does not say "mediate," it does not say "convince the complainant to accept a proposal" and it does not say "negotiate." It says "investigate." So why for six months—now over a year—has the Ombudsman still not initiated the investigation? What is the effect of this proposal before the Ombudsman? That's my question to this committee.

Then I refer you to subsection 14(2). This is the one I'm sure this committee has enjoyed with the Ombudsman. It says, "The Ombudsman may make any such investigation." The operative word there is "may." I suspect the Ombudsman is using that word "may" to support an argument that the Ombudsman has absolute discretion.

There are many administrative bodies that fall under this same type of clause, this permissive investigatory clause; there are many. I suggest to you that clause means that the Ombudsman may investigate a complaint subject to the constraints and restrictions imposed upon the Ombudsman in the act. It's not an absolute discretion. Then you're bumped to section 17.

Section 17 is the section that says the Ombudsman may refuse to investigate in her discretion if it's trivial, vexatious and so on. But there's also another section there, clause 17(1)(a), that says the Ombudsman may refuse to investigate if there is an existing administrative practice. I submit to you that a proposal is not an existing administrative practice.

Why? First of all, "practice" is defined in the Oxford English Dictionary as an established method. How can a proposal that's put on the table that isn't even accepted by the complainant be an established method of dealing with the problem?

Second, how can it be existing if it's not accepted by the complainant yet? A labour negotiation proposal, a labour arbitration agreement, is not existing until either both sides accept it or it's imposed by the arbitrator. It's not an existing administrative practice.

Third, what's the operative time period here? The operative time period isn't years later when the governmental organization is attempting to circle the wagons. The operative time period for determining whether or not there is an existing administrative practice is when the wrongdoing has occurred; in other words, in this case, when the students were ejected for life from the campus of Georgian College. I can go on at length on that.

I also direct your attention to "adequate remedy." How can the Ombudsman determine that there is an adequate remedy if she hasn't investigated? I have more comments. I'll submit those in a written submission, if you wish.

Let me get to a written recommendation that this committee may want to consider, a recommendation not unlike



the recommendations in the 40-odd recommendations in the 19th review. Let me suggest two recommendations to you:

1. That section 1 of the Ombudsman Act be amended by adding after clause 17(1)(b) the following: "Existing administrative practice does not include a proposal from a government organization to a complainant." In other words, in the definitional section you're simply defining "existing administrative practice" to not include a proposal. That's one way you could attack it.

2. A second way of attacking the problem is that the following be established as a rule under subsection 15(1) of the Ombudsman Act. Here's the rule: "Unless with the informed consent of the complainant, the Ombudsman shall not discontinue an investigation on the grounds that there is a proposal from the government organization to the complainant."

What's the effect of either of those two proposals? To require the Ombudsman to investigate until she makes a recommendation. That's the bottom line here. Don't try to close a file every time a government organization attempts to come forward with yet another proposal. Who knows whether the proposal is good or bad until you've investigated, unless the complainant accepts it?

Those are my long-winded suggestions.

**The Chair:** Thank you very much, Mr Gateman. Questions or comments? I would appreciate it if each caucus could limit it to one question, as we have five minutes left in the half-hour presentation.

**Mr Robert V. Callahan (Brampton South):** You're a professor of law at what college?

**Mr Gateman:** I'm on sabbatical now. I was from Alberta.

**Mr Callahan:** Who were you connected with?

**Mr Gateman:** I was with the University of Alberta.

**Mr Callahan:** I think it's important to lay on the table what this injunction was brought for, what the students were trying to do. Do you feel able to do that?

**Mr Gateman:** The students were attempting to enforce an existing board resolution on the books of the college that required teacher evaluations to be done.

**Mr Callahan:** All right. Now—

**Mr Gateman:** If I can just interrupt for one second, at the time they were requesting that the board resolutions be enforced, 48% of the teacher evaluations were not done.

**Mr Callahan:** All right.

**The Chair:** Thank you very much, Mr Callahan. Mr Villeneuve, please.

**Mr Callahan:** Just a second, Mr Chairman. I'm trying to ask some questions and I'm not even getting a chance to. May I please have more latitude?

**The Chair:** You can ask one more question, Mr Callahan.

**Mr Callahan:** One more? We're investigating the Ombudsman. Maybe we should be investigating this committee if I'm not able to ask any more questions than that.

**The Chair:** As I stated when I started, Mr Callahan, we are on a limited time frame. There are five minutes left in the presentation.

**Mr Callahan:** Mr Morrow, I don't think we're on a limited time frame when we're hearing allegations against a person who represents an office that has heretofore in this province been an exceptional assistance to people, with such famous people as Arthur Maloney and Mr Justice Morand. We've heard from a person here today, in the absence of the present holder of that office, and I think I'm entitled to ask questions of this gentleman to try to draw out and perhaps assist the office—if not the person in the office, certainly the office—to make certain that it's not just simply mud unduly slung without the opportunity of knowing what's going on. That's why I think I'm entitled to ask those questions.

**The Chair:** What are the feelings of the committee as a whole? Are they in favour?

**Mr Owens:** In light of a schedule that could be described as less than taxing, I think maybe we could look at a little bit more latitude. I think Mr Callahan is right. Mr Gateman has raised some allegations that I'm certainly interested in pursuing and I think we should allow some latitude.

**The Chair:** Thank you very much. Go ahead, Mr Callahan.

**Mr Callahan:** Thank you. Georgian College is run by the Council of Regents. That's who you're talking about who would have had the authority—

**Mr Gateman:** My understanding, sir, is that the Minister of Colleges and Universities is seized with the responsibility of managing the colleges and that the Ontario Council of Regents is simply an advisory body to the minister. That's my understanding.

**Mr Callahan:** All right. It seems very strange. I find it quite astounding that students would take that matter to the General Division court for an injunction. It must have been very costly for them.

**Mr Gateman:** I certainly can't comment.

**Mr Callahan:** Or did they have gratuitous legal advice?

**Mr Gateman:** I certainly can't comment on that.

**Mr Callahan:** You can't tell me whether they had gratuitous legal advice?

**Mr Gateman:** I can't comment on that; that's right, sir.

**Mr Callahan:** It seems to me that under the Ombudsman Act, to begin with, even if it's investigated by the Ombudsman's office, the best that can happen is that it recommend to the minister that he do something about it, and if he doesn't, then it sends a letter to the Premier.

**Mr Gateman:** They did that, sir. They have letters back from Premier Bob Rae.

1440

**Mr Callahan:** I mean if that's the best you're going to get from the Ombudsman; one would think the procedure that would have been taken, perhaps, would have been to have spoken with—or maybe I should ask, did they ever



talk to the people at the College of Regents to determine why they were not evaluating teachers?

**Mr Gateman:** There's a two-pronged answer to your question. First, yes, they did talk to the chair of the Council of Regents, Richard Johnston, and he played a Pontius Pilate role in this case and washed his hands of the affair.

**Mr Curling:** I don't understand that.

**Mr Gateman:** Second, they approached the Ombudsman because the Minister of Colleges and Universities advised the students to deal with the matter through the Ombudsman. While they were dealing with the Ombudsman's office, on the advice of the Minister of Colleges and Universities, Richard Allen, the counsel for Georgian College was writing letters to the Ombudsman, encouraging the Ombudsman to close the file.

**Mr Callahan:** You're talking about Mr Johnston. Surely the Council of Regents is made up of more than just Mr Richard Johnston.

**Mr Gateman:** Maybe I haven't made my answer clear. Richard Allen, the Minister of Colleges and Universities, advised the students to deal with this matter through the Ombudsman's office. While the students were attempting to get the Ombudsman to investigate, the counsel for Georgian College was writing letters, behind the students' backs, may I say, to the Ombudsman, attempting to encourage the Ombudsman to close the file.

**Mr Callahan:** The trustees of the Council of Regents refused, then, to evaluate teachers. That's what you're saying?

**Mr Curling:** The minister did.

**Mr Gateman:** No, I'm not. I'm saying that the minister advised the students to deal with the matter through the Ombudsman.

**Mr Callahan:** I'm sure that others want to ask questions, but I—

**Mr Gateman:** But, with respect, the reason we're here today is not to deal with the issue before the Ombudsman; the reason we're here is to deal with how the Ombudsman has dealt with the complaint.

**Mr Callahan:** I appreciate that, but I think that—

**Mr Gateman:** Our point to you is that there have been three attempts by the Ombudsman, when a proposal arrives on her desk or even before the proposal arrives on her desk, to use self-serving influence on the complainants to suggest to them that they accept or reject proposals that they don't even know about or to close the file. That's the issue, why we're here.

**Mr Callahan:** Quite frankly, I find it offensive to have people coming and testifying without providing the opportunity for the person against whom they're testifying to at least hear the allegations and respond to them.

**Mr Gateman:** Sir, all I can do is re-read the letters from the Ombudsman's office.

**Mr Mammoliti:** She doesn't want to be here. It's not his fault.

**Mr Murdoch:** First, I'd just like to defend the Chair on the time for Mr Callahan. We do have time set up, and the Chair was only trying to make sure everything—

**Mr Curling:** We've been through that already; go ahead.

**Mr Murdoch:** No, I was going to say don't forget we'd like to rule on this too, Mr Chair. When you ask the other side, it's fine, but—I know we have a schedule and I appreciate what you're trying to do here. I'll be short, then.

We have the same frustration problem with our committee, and we look like we're going through the same thing that you've gone through. But are the complainants totally frustrated with the system? I just want to know. Do they figure our system here has broken down?

**Mr Gateman:** I think it's fair to say that the complainants are rather mystified that it's taken over a year and a quarter to actually get up to the college and take the first step, and that is get the file.

**Mr Murdoch:** Noble has a quick question.

**Mr Noble Villeneuve (S-D-G & East Grenville):** Fifteen months' time is way too long for anything when we talk about a situation that has gone through probably another 15 months of dealing with different ministry officials. What mechanism, in this case, did the college use to not provide the Ombudsman with the required documentation? I thought that when an Ombudsman requests, of a governmental institution, a file, a document or a series of documents, they would be forthcoming immediately. What did they use to stall?

**Mr Gateman:** They argued that the Ombudsman did not have jurisdiction. The reason the Ombudsman did not have jurisdiction was because there were parallel actions, one of which was a request to the Information and Privacy Commissioner to get the file.

In all fairness to the Ombudsman, subsequent to May 15, there was a six-month statute of limitation to file a statement of claim against a minister of the crown. Because the Ombudsman hadn't done anything, the complainant was obligated to file a statement of claim or be statute-barred from suing the minister. So there was a period of probably three months when the Ombudsman was on solid ground to argue, "We can't do anything because there is a parallel action."

In all fairness, I think the estimate on how long it's taken the Ombudsman to do something is not a year and a third, but just a year. If you add to that the fact that it took them a year to take one step and that it's probably going to take 10 steps to solve this matter, we're looking at two or three years before the matter is resolved.

I refer you to the 19th report, which I had an opportunity to read yesterday. There are matters that are in the two-year range, and this committee finds it rather disturbing, to say the least, that the Ombudsman hasn't moved the case along.

**Mr Villeneuve:** Could you make a quick recommendation? This committee is sitting right now to try to correct the procedural nightmares we're having, some quick fixes.

**Mr Gateman:** My quick recommendation is what I read at the very end, and that is to deal with the definition



of "existing administrative practice" and to deal with how the Ombudsman treats proposals.

After talking to the Ombudsman just last week to advise her that I was bringing this matter forward, so that she wouldn't feel I was doing anything untoward behind her back, I can advise that it was clear to me that the Ombudsman's office does not have any practice or procedure to deal with proposals. In fact, their letter I read out to you treats proposals as reviews under the act, and they're not.

My suggestion to you is to define "existing administrative practice" under section 1 of the act, or under section 15 pass a regulation that says, "Without the consent of the complainant, the Ombudsman cannot discontinue an investigation."

The beauty of this is that it puts the Ombudsman on the hot seat to commit herself to making a recommendation, and she loses nothing. In fact, it's to the Ombudsman's benefit to do this, because she will not be wasting time dealing with trivial tactical moves on the part of an institution, in this case Georgian College, to delay and delay the matter and to win, what is obvious to any objective observer, a war of attrition, to wear out the complainant.

**The Chair:** Ms Haeck, please.

**Ms Haeck:** I will yield to Mr Owens.

**Mr Owens:** I share Mr Callahan's concerns in terms of some of the comments that have been made, and I would like to request that perhaps a copy of this afternoon's Hansard be sent to the Ombudsman so that she may have an opportunity to respond. Then she may also take the opportunity to attend the committee as well, which would be nice.

I guess my question is around the time period that it's taken for your action to proceed. As Mr Villeneuve indicated, 15 months is a heck of a long time, especially when registration dates and time-sensitive issues are involved. What recommendations would you make to this committee in terms of fast-tracking cases, and perhaps setting up a process where time-sensitive issues are handled expeditiously or issues where either a person's livelihood or liberty, if it's a person who's involved in the correctional system, is involved? What kinds of recommendations would you make in that respect?

**Mr Gateman:** I find that question very interesting; it's a good question. My response to it is that if you deal with the ambiguity that surrounds the practice and procedures of the Ombudsman regarding proposals, then you will have fast-tracked a lot of the cases.

I'm certainly not going to speak to the issue of how you would red-flag a file and give this one top priority. What I'm suggesting from the experience in this file, in this case—by the way, all these comments are simply as a result of this case.

1450

**Mr Owens:** Sorry to interrupt you, but as members of this committee, as you're well aware, we certainly have immunity with respect to things that may be said. However, you as a witness—and there's obviously at least one member of the press here. Our concern is that if you're making comments that cannot be substantiated. First of all,

you're impugning the reputation of someone who in the opinion of this committee has had an excellent reputation and, second, putting yourself at risk for actions against yourself.

**Mr Gateman:** I'm well aware of that. The only reason these statements of fact cannot be substantiated is because you're suggesting there is a contrary view. If there is a contrary view, then this committee certainly has methods of dealing with it.

I'm simply stating to you the facts of the complainant in this case. Now to suggest that those facts are not correct, this committee can certainly subpoena other witnesses. But the facts of this case are as have been stated to this committee this afternoon and I ask this committee to strongly consider dealing with the matter of a tactical stonewall on the part of an administration or of an institution by putting forward yet more and more proposals. The effect of that proposal is, sir, that the Ombudsman then calls the complainant and attempts to influence the complainant to accept or reject proposals without any investigation ever having been done.

**Mr Owens:** We take that very seriously.

**The Chair:** Mr Mammoliti, please. If you can make it very brief, I'd appreciate it.

**Mr Mammoliti:** Mr Chair, very, very quickly. Sir, what role do you see this committee playing in reference to the Ombudsman's office and what role would you want to see this legislative committee play in reference to the Ombudsman's office?

**Mr Gateman:** That's asking me to generalize from a very specific case. I'll make two quick points: One, on this particular case before you, I would hope that this committee would deal with the matter of proposals. On a more general comment, I would hope that the committee would deal with subsection 14(2), which says the Ombudsman may investigate, and deal with whether or not that superimposes on the Ombudsman absolute discretion.

I can indicate, as I have said, and your counsel may give you advice on this, that there are other bodies that have that same type of section and it does not grant them absolute authority, absolute discretion. That intertwines with the problem of proposals, because the Ombudsman can argue that she wants to close the file down at her absolute discretion, regardless of whether the investigation has been done and regardless of whether the proposal is fair and adequate.

I hope those are two things that this committee—the business of proposal and the business of the Ombudsman's jurisdiction under subsection 14(2)—would send some directions on under subsection 15(1), which allows you to enforce regulations. That's what I would hope, sir.

**Mr Mammoliti:** That's all I have, Mr Chairman.

**The Chair:** I want to thank you very much, Mr Gateman, for taking the time out this afternoon to give us that fine presentation.

**Mr Gateman:** I want to thank the committee for listening.



## MARGARET HUTCHISON

**The Chair:** Next we have Margaret Hutchison. Good afternoon, Ms Hutchison. You have a half-hour for your presentation. The committee would appreciate it if you would leave some time at the end so it can ask some questions or have some comments. Begin when you're ready. Take your time, and would you please read your name into the record.

**Ms Margaret Hutchison:** My name is Margaret Hutchison. However, Mr Murdoch will know that I'm commonly known as Peggy. I'm not trying to be deceitful, but it is a nickname by which I am known.

Just to begin with, I'd like to comment that I'm glad I came early enough to hear Mr Gateman's presentation, because I think we can save a certain amount of time. I realize I'm going to come to pretty similar conclusions as he has about the role of the Ombudsman and just the way the Ombudsman's office interacts with the public and with complainants.

Considering whether the Ombudsman herself should be here or should not be here, it was coincident that I also met with her last week. I've been following a case, not of my own but on behalf of a complainant, and helping him with it. I won't disclose all the details of that, because I don't want to compromise—we finally did have a meeting with the Ombudsman last week, and I did not tell her that in the meantime, since we'd been given this meeting, I was coming here. I'm not coming to complain about her, herself, but mainly just see if there may be some flaws in the way that this particular complaint has been handled.

At the time that I met with her I picked up a copy of this book, and I'm very impressed with the opening statement. My background—until about three years ago, I was just a student of philosophy and a farmer and a technical writer. I had not heard of any act in Ontario, or cared, or about politicians or what MPPs stood for. But because of an issue that affected me personally, I quickly came into contact with a number of government agencies and discovered what happens when things fall between two stones, and how frustrating it can be when two people are telling you opposing things or: "Contact this other ministry. We don't deal with that."

As a result of that I became involved in the land use issue. I guess the success of that is that we did get the attention of the previous government, and the subsequent government has undertaken the Sewell commission and so on. That is my experience, and I guess the success of that is I now have people phone from all over Bruce and Grey and Simcoe counties asking me for help to deal not with that particular issue but other agencies, the Ministry of Housing and so on. So in a sense, I find that I can, as they say—

I have to confess. You see, I ran against Mr Murdoch in the election with the NDP. I might as well be really up-front. I didn't realize that he was on this committee until I came today. Hansard only tells you who the chairman is. It doesn't tell you who the members are.

As I say, that is an aside. I'd never heard of the Ombudsman until this neighbour three years ago said, "Well, if I don't get any success, I'll go the Ombudsman." To give

them credit, this was in June 1989, so that's how far back this particular case goes with the Ombudsman. They were told right off the bat: "If it's a municipal issue, we can't deal with it. It's only provincial agencies." So they had to wait until it got to the point where it was a provincial issue. The Ombudsman has actually only handled it since February 1991, and last week we finally got an interview with the Ombudsman herself.

In a sense I can understand what the role of the Ombudsman is. It's a very impartial role. I have found myself in this position partly because I ran for the party that did form the government and everyone immediately assumes, "You just phone any ministry and tell them what to do." I've had a certain amount of success, not saying who I was or anything else, but if you have a phone book, you know exactly whom to go to and ask.

In a case with the Ministry of Housing I found that the people I was helping who were doing some public housing knew another unit that was able to use certain standards for their electrical, and they couldn't understand why the ministry was telling them that they had to do something else which was going to cost them about \$15,000 more. So I got on the phone and went through and found that this department hadn't gotten the updated technical report that said they could now use these standards, and the person who was advising them out of the regional office was going by the old standards. So that quickly got straightened out, but I realize how important it is. You need somebody to help you just sort through this stuff, and not everybody knows how to do it quickly and how to get an answer.

## 1500

I was pleased to see how many cases have been quickly responded to when the Ombudsman puts the details forward. One of my first recommendations probably would be, though, from working with this particular person on this case—my role has been in helping them articulate exactly what it was they wanted the Ombudsman to do. The Ombudsman very quickly said what the mandate was to some degree, just that they could only handle it if it was a government agency, but there was never any clear—just a sheet of paper, an information sheet that says: "This is what my mandate is. I can only look at these things, and this is the kind of information I need to give to an investigator to handle it. Tell us clearly what it is that you want." It might have been speeded up if I'd gotten involved with this person a little earlier, and if the Ombudsman had said what her mandate was earlier we could have spelled it out more clearly.

I'll just give you a brief history of how this case has gone and where some of the frustration has resulted.

June of 1989: An initial inquiry to the Ombudsman was told, "Can't do anything until it's a government agency that we're dealing with."

February of 1991: The case was then referred to the Ombudsman and they were very helpful, and said that in fact they had set up a new public program where they were going out to communities to meet with people. So went to Owen Sound and was able to meet with someone from the regional office who heard the case and said: "Yes, I think



you do have something that the Ombudsman can help you with. Go home. Write it out," and so on.

Subsequently, then, in June of 1991—it takes a while to do this—this person received a letter back saying: "Yes, we are going to undertake this investigation. We've handed it to this investigator. This is his name." Great. Silence. Never heard from the investigator.

In this particular case time is of the essence, because the longer this went the more damaging it would be if the decision this agency had made was going to be reversed. Obviously there's somebody on the other side who has the favourable decision and if you're asking an agency to change its decision, the longer it goes the worse it gets. So there were a number of phone calls to this investigator asking what the status was and did he need more information. It seemed like a fairly simple investigation.

Finally, I got involved I guess in September of 1991, and we sent a letter to the Ombudsman—no, to this investigator. Previously when Mr Gateman was speaking we had to distinguish when we're referring to the Ombudsman herself or the Office of the Ombudsman, because I don't think you can blame everything on the Ombudsman herself when people—for instance, this investigator seemed to be quite intractable about receiving guidance on conducting the investigation.

Finally, I sent a letter to the investigator and to his superior; he had apparently promised this report by Christmas. Which Christmas? Christmas had come and gone and I still hadn't heard anything. So finally the report arrived about a week after that. We read the report and I said, "Is this our case?" The report was trying to defend this government agency almost, trying to explain some of its decisions and so on, without saying whether they'd investigated what we'd asked them to investigate and whether they were satisfied with the response they'd received from this agency. We met with the investigator, went over the report, literally tore it apart. We pasted it out on a big book, cardboard, went through with all our letters back and forth from the agency, from the Ombudsman, from different bodies, sort of substantiating all the errors that had been made in this report, which was supposedly going to the Ombudsman so that she could make a final decision.

At the end of this meeting I said: "Can we just clarify the three things that we would like you to do as part of your investigation? The first thing is to rewrite this report fixing these things or shortening it, and not to waste the Ombudsman's time. Could we not see a copy of this just to make sure that you do finally have it right?" Second, we asked them to write to the agency and request a copy of their policies and procedures for dealing with complaints. Third, we were requesting a letter from the Ombudsman herself on whether they considered the response of that agency—because we knew they didn't have them written down—to be equitable, all this in the light of knowing that this very same agency had made a decision for another party quite different, and based on what?

The result of all this was—I'm not quite sure, that was March 1992—in April, maybe May 1992 we finally got a letter from the Ombudsman: file closed. We consider that

the letter we received back from the agency is satisfactory, but no copy of whether it had these policies and procedures, because in the meantime, I'd run into the chairman of that agency who admitted that it didn't have anything written down. They just sort of wing it. I said, "Well, do you really tell me you're running a government agency where every time something comes in, you do something different, you just wing it?"

It was about that time that I saw a billboard in Toronto, huge, on Avenue Road, that said: "What do you do when Queen's Park is putting you through hoops? You phone the Ombudsman. Here's the 1-800 number." So I wrote a letter to the Ombudsman, saying, "What do you do when the Ombudsman's putting you through hoops?" The timing of that and the announcement of this committee seemed to coincide. Magically, we got our meeting last week.

I found the Ombudsman herself to be very responsive and wanting to get right to the point. I think in that meeting—it was almost an hour that we met—it became clear to her that the crux of what we were asking her to do had not been relayed to her. Finally, because I had this, I said: "What is your mandate? Is it not as stated in here, to request that a government agency not just appear to be fair and equitable, but actually abide by it. If they have an appeal process or whatever it is, bylaws, whatever, it may look good on paper, but are they actually implementing it?"

I don't know. That's why I say I didn't want to compromise what her decision would be by saying that I would be coming today, because it will be up to her. But I think I gathered from that meeting that they will then be requesting from this agency exactly what we'd initially asked for. I apologized to her for sort of having to waste her time on that, when 15 months before we knew exactly—we had stated that before, but for some reason that had not been relayed.

Mr Carrozza sent me a copy of this report. It just all happened to be coincidence and I wondered why the standing committee—is this committee separate from the standing committee you've been convened to—

**The Vice-Chair:** This is the standing committee.

**Ms Hutchison:** The names are all different. There are more names and different names and I wasn't sure.

**Mr Callahan:** We are sitting right now, but we are the standing committee.

**Ms Hutchison:** I won't keep you sitting too long. I just request Mr Carrozza to send a copy of this to me.

Certainly I was surprised at one of the responses that something had taken so long, when it did not seem to have been the complainant's fault that it had taken so long. I'll be sending you a written report. I'll just sort of go through and give some items. I didn't want to bore you with reading something today.

My conclusions are probably pretty similar to what Mr Gateman ahead of me was saying. In the Ministry of Revenue they've instituted a—I forget what they call it—reorganizing, that's not it, retechnology, just looking at the way they handle information. When people phone, who do they get directed to? John Randolph has headed that up,



and I think they're going to try and do this with other ministries. In a sense, it's streamlining and it's making an agency more responsive to the public and trying to just get to the crux of the matter and make agencies more uniform.

I think today a lot of things have changed. People have faxes, and they expect more. If you phone a ministry and someone says, "I haven't heard it because it's in this pile of white paper." You can say, "I'll fax you a copy." You don't have to put it in the mail and wonder whether it's still going to get routed to the wrong person. "What's your fax number? I'll fax it to you. You can phone me back in 15 minutes and tell me why the letter I sent you six months ago hasn't been acted on."

This has raised people's expectations as well on how agencies work. I think this is what assists in getting the antagonism of people who normally would have just said, "Oh, this is the government. Forget about it. I'll just go back to what I was doing. I'll transfer to another college," or whatever.

1510

One of the recommendations I probably would have, though, is—the Ombudsman seems to rely on only one framework of information coming and certainly doesn't have time to go over all these complaints—when a complaint is received, people should sit down and, almost as an exploration or like a discovery, once they've decided that this is an investigation that they can handle and is within their jurisdiction, help them establish what exactly it is that they want done. Then you have a benchmark to put that against. Listening to that previous case, I think maybe that wasn't clearly identified for the Ombudsman either.

Relative then to this initiative of the reorganization, as it's called, it sort of comes under general office administration and process and it's something that perhaps the Office of the Ombudsman hasn't really looked at. The person herself is good at making decisions and is fair and so on, but really look at the way complaints are handled and just the whole process within the Ombudsman's office itself and perhaps, if part of its mandate is to make sure that other agencies meet certain standards, provide almost a course for any agency that has an appeal board or something, to make sure there is some kind of uniformity.

Some of these complaints seem to get handled very quickly and others don't and since there are no statistics to show which ones were just quickly taken care of, which ones required a lengthy investigation and which agencies there were, you might find that some agencies are known for being intransigent about having the Ombudsman try to interact with them, whereas other agencies are much more responsive.

I'll be writing in and commenting on what your own recommendations seem to have been. The one that was mentioned, that there should be statistics and there should be a comparison to the year before and something to show what cases are ongoing and maybe identify what kinds of things really are problems, is certainly one I'd support. I don't know whether you have any questions on what I've said.

**The Vice-Chair:** We do, and we do try to do them in an orderly manner. The previous speaker had, I would say, about 50 minutes for his presentation and questions and we'll try to keep yours in a fair line as well. I guess under those circumstances we have about 20 minutes for questions and we'll split that through the caucuses. The first person with his hand up was Mr Mammoliti, and then Mr Callahan, and we'll take others as they raise their hands.

**Mr Mammoliti:** You're not going in rotation then.

**The Vice-Chair:** No. We'll start over there and then we'll go over here.

**Mr Mammoliti:** There are three recommendations I have taken note of. Of course the first one is improved communications within the office, something that you recommended.

**Ms Hutchison:** Yes. I found one particular person to be quite intransigent.

**Mr Mammoliti:** Okay. We're going to get to that in a minute. The second one is to try to implement a system whereby the complainant is helped somehow.

**Mr Hutchison:** Yes.

**Mr Mammoliti:** Right now there doesn't seem to be a mechanism there to help people who are complaining.

**Ms Hutchison:** No.

**Mr Mammoliti:** It's taken for granted that each complainant knows what to do.

**Ms Hutchison:** The Ombudsman's office, I can testify, is quite good about its confidentiality. At some point I was authorized by the complainant to phone this investigator and try to say what this person could not say himself and could not speak to me about. Finally, he got authorized through the complainant that, yes, I could speak, and that was great. This was quite far down when I got involved and no one had sort of said to him: "Let's clearly identify what is I'm going to do. Is that what you want me to do?" and he would have said: "No, no. This is what I want you to do."

**Mr Mammoliti:** The third one is to improve the process in which complaints are handled.

**Ms Hutchison:** Yes.

**Mr Mammoliti:** In your particular experience, did you find there was a lack of communication—I'm going to ask you to be more specific, okay?—perhaps that there was a breakdown in communication between the levels you were dealing with at that office?

**Ms Hutchison:** Yes.

**Mr Mammoliti:** And did you get a sense that there was perhaps a low morale or that somebody was blaming something on somebody else in that office while you were doing that?

**Ms Hutchison:** I didn't get that sense, but I certainly got the sense that the information was not being conveyed within the office, and because I never did see the final report of this investigator to the Ombudsman, we could only establish from what her response was that he still had not put into that report what really we felt the crux of the investigation was.



**Mr Mammoliti:** What about attitude at that level? Were you treated appropriately when you phoned? Were you being spoken to in a rude manner? Do you have any complaints about that?

**Ms Hutchison:** No. Right up until that point, it was good. Right up until the point where the investigator took it on, it was very good, but, as I say, silence. We never heard anything, nothing in writing. We would send a written letter, because, as any good lawyer knows, you want it on paper, and get a verbal reply finally, but I don't like writing letters where I sort of have to threaten someone or cc it to his superior. I don't think that's the way to do things, but that seemed to be the only way to get this investigator to respond.

I certainly didn't like writing to the Ombudsman and saying, "What do you do when the Ombudsman's putting you through hoops?" I don't know how it was that she responded, but I felt from meeting her that it became obvious to her that somewhere between A and B she had not been getting the information, and I think she was surprised in that meeting what the very simple things were that we were asking for.

**Mr Callahan:** Again I just want to set the record straight. There's nothing in the legislation that calls upon the Ombudsman to be accountable to us or anybody, and that's the legislation. That was passed by the Legislature of Ontario, and for a very clear purpose, I think.

I'll read what she says she thinks the reason is, but if you look at sections of that act, subsection 5(2) says, "The Public Service Act and the Public Service Pension Act do not apply to the Ombudsman," a clear indication that she or he was not to be part of the civil service. Subsection 14(2) says, "The Ombudsman"—

**Mr Perruzza:** She's covered by the Legislative Assembly pension system.

Interjections.

**Mr Callahan:** Just a second. "The Ombudsman may make any such investigation on a complaint made to him or her by any person affected or by any member of the assembly." It says "may." It's not mandatory. If I make a complaint to the Ombudsman on behalf of a constituent, she is not bound under this legislation to do what I ask her to do. So again she's independent from the Legislature.

I know the standing order we got from the House says, "Investigate the Ombudsman." In fact what we're doing is we're supplementing a bill that was passed by a Legislature in the past that tried to make the Ombudsman independent of the political pressures and the political so on and not turn her into a ploy of the government of the day, and I tell you, that's exactly what she thinks, because I read from a speech she made. She says:

"Independence from political pressure, from vested interest, from saying what is expedient rather than what is right. I want to control what you do or decide. The only answer we can possibly have is no"—that's her comment. "On the one hand, the Legislature set us up as an independent body, but on the other hand, they want to treat us like a government department."

I say, if that's what we're doing, if that's the net result of all this, that we're going to treat the Ombudsman's office as another arm of the government, then let's get rid of it, because there's no point in having it. Quite frankly, I think up to this point, from what I've been reading in the press and so on, we've already destroyed the office. Nobody's going to believe they can get an independent shake.

Clearly these people who have come before us and some of the letters we've got are legitimate complaints, but they're systemic. They're just like complaints about the courts; you can't get a trial date for a year or you can't get on a civil jury list for three years.

**Mr Mammoliti:** It's more than that, Bob.

**The Vice-Chair:** George, no. Order.

**Mr Callahan:** But to a large extent that's what it is. It's systemic. You make the Ombudsman the court of last resort for every individual in this province who can't get recourse through the red tape of government, but in essence you probably overburden it. You've got the Treasurer on the one hand saying, "We want to take money away from the Ombudsman's office," which he's done to every other ministry, so he's treating it like a ministry as well. My understanding and my reading of this act is that this is not an arm of government; it is independent and should remain independent. If it doesn't, then we may as well abolish it.

1520

**The Vice-Chair:** Mr Callahan, did you have a question for the deputant?

**Mr Callahan:** I was asked if I had comments or questions. That was my comment. I really have no questions of this lady, because I think she's come forward with a concern that obviously relates to the question of whether or not you were responded to, whether you felt comfortable that the Ombudsman was doing the job for you.

**Ms Hutchison:** Can I comment, then, on your comments?

**Mr Callahan:** It may well be that you ran into somebody in the Ombudsman's office who, for want of a better word, was probably not terribly polite. I'll tell you, I'm sure that some days in many of our offices, when we get—

**Mr Perruzza:** On a point of order, Madam Chair: I've never seen any member of any committee try to read someone's mind or someone's motives. It's silly to try. Ask her the question, if that's what you want to know.

**The Vice-Chair:** I think that the deputant—  
Interjection.

**The Vice-Chair:** Excuse me. Order, please. I think the deputant actually has a desire to respond to some of the comments made, and then we will turn to Mr Murdoch.

**Ms Hutchison:** My comment would be that I think the role of the Ombudsman is very important and that it has to be independent. What I said right at the beginning was that I admitted that I have been affiliated with a particular party. Prior to that, I was independent; I could have been a purple Rhinoceros and would get the same results. In a sense, it's put me at a disadvantage.



The advantage of the Ombudsman and the Office of the Ombudsman—

Interjection.

**Ms Hutchison:** I'd appreciate it if you'd listen when I'm responding to your comments. You might learn something.

**Mr Callahan:** I'm sorry. My colleague was just saying something.

**Ms Hutchison:** I'm horrified that people would phone me and say: "Well, of course, you're with that government. Surely you can help me." I'm just saying that should have nothing to do with it.

These government agencies, just to read what the Ombudsman herself has on the front of her book, "My objective is to give the concepts of fairness and equity closer scrutiny so we can see why they still elude us in a country which considers itself modern, enlightened and democratic," and in spite of the fact that people still think it matters that you can get something done by who you know, whether you can afford a lawyer, whether you are related to the government in power or not, and are quite horrified, in fact, to find that it doesn't seem to matter what government's in power. I still get results from making inquiries. Either an agency has been given money, which is my money—I pay a lot in taxes, and so does everyone else, to support these agencies. We expect them to operate in a fair, humane and consistent manner. When they don't, then we get excited.

We pay a lot to the Office of the Ombudsman—\$9 million or whatever it is—to do that job for us. I am a farmer, I have three children, I work on a lot of committees, I'm a writer, and I've a lot of things to do. I am not employed to drive to Toronto today when I could be taking in hay. That's why we employ the Ombudsman to do that, and we expect her to uphold that.

So far I think she has, but perhaps one of the things that has not been looked at and that she has not been given help in is how to make sure that office functions just the way we expect all the other agencies to function and the way she is looking at them and expecting them to function. Perhaps she needs to look at her own office to see whether it even lives up to its own standards.

Or get rid of it if it's not going to be impartial. But I think it is being impartial; I just think there are a few glitches in there. I think it's very important that we have that agency and that, regardless of how governments change or opinions change, there is an agency that looks objectively at the way government operates and makes sure that whether you're—

**Mr Callahan:** Amen.

**Ms Hutchison:** —a lawyer or just a farmer, you'll get the same response. The lawyer wouldn't need the help to make his case to the Ombudsman, but the farmer maybe does.

**Mr Murdoch:** First of all, I'll make quite clear that maybe we should have Bob Callahan as one of our witnesses, because obviously he hasn't been following our procedures that we've been going by for the last two years.

**Mr Mammoliti:** Hear, hear.

**Mr Murdoch:** I have a problem with him saying—we've said all along that we're not here to take away the Ombudsman's control and have anything to do with what she decides. We've never once—no one on this whole committee who's been here since I've been here, for two years—wanted to take away her decision, but somebody has to be responsible for the way it's done.

Just as Margaret—it's hard to call her Margaret—Peggy Hutchison has said, there's got to be some accountability here somewhere, and that's what we've been looking for in this committee. Whether it's us or somebody else, that's what this committee wants to know, because we've been frustrated for the last two years. We've had other complaints come to this committee similar to yours, and we've asked for information so that we can see whether the process has been done. Not the end decision; we have no right to have that; that's why the Ombudsman's there. That's what this committee is trying to find out.

Peggy, obviously you were concerned with the way it was being handled; that's what you've pointed out. Did you ever consider maybe coming to this committee and saying, "I'm having trouble with the Ombudsman"? Did you think maybe that's what this committee is here for?

**Ms Hutchison:** That would have been my next step, because at some point the Ombudsman sent a sheet to us that showed sort of a track—I think it's somebody on a snowmobile going through the woods—and gives the different stages: You have a complaint, it's handled or it's not, letters are written to the agency, it's resolved, it goes to an investigator, it carries on and so on.

I wrote and asked: "What do we do when the Ombudsman's putting us through hoops? We're now at stage 3A, and you've closed this file. What about all these other stages where the Ombudsman can make a recommendation to this committee or to the Premier?" I think that's number 10 or whatever it is. If we had not had the meeting last week, I would have come to the committee. On the other hand, I think this committee has a lot of things to do besides handle things the Ombudsman has closed.

That's where my recommendations parallel Mr Gateman's. I was not satisfied that the file was being closed. The letter did not say: "The agency did supply this information. We are satisfied with what their policies or procedures are." It simply said, "The agency says this, and this file's closed." So I would have ended up here.

Maybe that's where the information sheet that I recommended would be sent to somebody, when they start on a course, so that both sides know where they are going and what they can expect the Ombudsman to do or not to do. I mean, you don't tell the Ombudsman what decision to make, but you can certainly say that you think these are the problems that should be investigated. In our case, all along they completely misinterpreted. I'm sure it couldn't have been deliberate, but it almost got to the point where the person who was helping said, "Somebody in that office doesn't want this to come to light." I said, "I'm beginning to agree with you."



**Mr Murdoch:** That's exactly one of the reasons this committee took on this task of just taking a look at the Ombudsman and the whole setup, which hasn't been done for 17 years, so again, there shouldn't be any problem with it.

I want to make quite clear too that the Ombudsman has been asked to come here. She has refused, and I'm sure she has her reasons. But we have to hear people out, and we have had people like Peggy Hutchison send us letters. We didn't know where to go. We were running into a dead end in the Ombudsman office, as you were and as Mr Gateman was. So we said, "Hey, maybe we should look at the whole thing," and that's all we're trying to do. No one wants to take the responsibility of making decisions. That's the Ombudsman's job, and I don't think anybody wants to take the job away. But we're certainly pleased to have you come here and tell us your problems, and hopefully it'll help solve the big problem we have. We have one big problem here: Does this committee exist or not?

**Ms Haeck:** Thank you, Ms Hutchison, for a nice thumbnail sketch of what you've encountered. I want to thank Bill also for his thumbnail sketch of our two years. It brings to mind that in one of the recent annual reports—I think it was just the immediate one; I'm not sure what the number of it is, but 1991. It was very readable in a lot of respects, although we did criticize it for not following through on some of the statistics we would need to look at the operations.

But one of the concerns the office is supposed to be looking at is the issue of delay. We have workers' compensation cases that have been referred to that office; a long delay in getting any kind of resolution to a problem has been seen as a legitimate reason for an investigation. From your standpoint, do you feel that one of the cruxes for you coming here is the issue of delay?

1530

**Ms Hutchison:** Yes, because this has now gone since February 1991 since the Ombudsman was approached to undertake this. It took them a month to decide whether they would in fact investigate it and carry on with it because it was fairly complicated. That's from February 1991. That's a long delay, and the longer it goes, if her recommendation to the agency is to change its decision—I mean, somebody is going to have something changed.

**Ms Haeck:** So in reality, you still do not have any resolution to your problem.

**Ms Hutchison:** No. We met with the Ombudsman last week and just restated what it is that we've been trying to get through to her and that from her responses—one of the last letters was, "Do you write your own letters or do you just sign a pile of them?" We wondered whether the information going in could possibly elicit the response that was coming out. From the meeting, the person who was attending the meeting, I realized, was part of the problem.

**Ms Haeck:** I have one more question which I think really relates also to Mr Gateman's problem. As a complainant, you have the right to get access to your file. This committee has been told that in its investigations of cases that have not been recommended, we can't get that infor-

mation. But you can, so I'm wondering if you, along with the person you're advocating for, have sought out copies of the investigation. Have you tried to look into your file to see what in fact they have done on your behalf?

**Ms Hutchison:** I think they've presented everything right up until the report that I say we literally tore apart. That report, I gather, was going to be submitted intact but an additional report was going to be appended to it. I said, "Just to save everybody time and breath, could we see a copy of that just to make sure that you do finally have straight what it is we're talking about?"

But we did not see that report. Simply, the next correspondence was a letter back, "Case is closed." At that point I phoned an assistant to the Ombudsman and explained that, from her response, we felt the correct information still hadn't gotten through to her and we had not seen the report. This person said, "I'd be greatly surprised if you hadn't seen that report," and I said, "Well, be surprised, because we haven't."

We are now requesting an interview with the Ombudsman. Let's stop all this paperwork and back and forth. We can state it in five seconds and just decide whether we're going to carry on with this or whether she's satisfied with what the agency has given her.

**Ms Haeck:** So to restate, in reality you are not really sure what that office has done on your behalf.

**Ms Hutchison:** No.

**Ms Haeck:** As a result of these conversations here today, do you think it would be a course of action that you would consider undertaking, that is, to ask for a copy of what has transpired?

**Ms Hutchison:** I think so. I don't know what the next stage will be if again the case is going to be closed. Maybe we'll just try another avenue. Well, the next avenue I guess is to come to this committee, if that's appropriate; I don't know.

I hope the Ombudsman's going to make the decision that we had hoped she would. That's why I say I don't want to talk about it, because I don't want to influence her one way or the other.

One of the recommendations—I've gone through the recommendations of this and I'll write that out and hand it in—is that unless the complainant authorizes those to be released to this committee or to anyone else, I think they should be left confidential. I've not been authorized to talk about that.

**Ms Haeck:** Oh, absolutely, so none of us really wants to get into that. I appreciate your comments.

**The Chair:** Mr Duignan, if you could make it brief, please.

**Ms Hutchison:** Anyway, thank you very much for letting me come.

**The Chair:** Mr Duignan, please.

**Ms Hutchison:** Oh, I'm sorry. I thought you were dismissing me.

**Mr Duignan:** I was listening with interest to the last two, yourself and the previous speaker. It was a very interesting report; it was a 1989 report, the review of Ontario's



regulatory agencies called the Macaulay report. He made some very interesting observations and recommendations in this report, and I would strongly recommend to the committee members that they read what the Macaulay report has to say on the Ombudsman's office and some of the recommendations that have been made in there. It covers some of the concerns that had been brought up earlier. Again, it also deals with the question of the independence of the Ombudsman's office and it makes reference to the fact that if the Ombudsman is independent there is no supremacy of Parliament, and he goes on to list six indications of why the Ombudsman is not independent. Maybe the committee would want to look at some of those areas too.

One quick question is, you indicated there was some problem within the Ombudsman's office.

**Ms Hutchison:** I just felt that the information that we were trying to relay was not being relayed, and that's only from the responses that we got, and when we finally had a meeting with the Ombudsman I think it was coming as news to her.

**Mr Duignan:** Do you know who the individual was, by any chance?

**Ms Hutchison:** No, I don't want to—that's what I say, I think—

**Mr Mammoliti:** You know who it is; you don't want to—

**Ms Hutchison:** If the Ombudsman only has one person who is an assistant or advising her on matters, maybe it should be broadened. Maybe, as in any sort of office, you need more than one opinion. I think we got the interview from speaking to the secretary, who said, "You do sound frustrated." But I don't think it should happen that way.

**The Chair:** Mr Mammoliti, you had one quick question, I believe?

**Mr Mammoliti:** I just wanted to ask who that person was, but obviously she has a problem with letting the committee know.

**Ms Hutchison:** No, I think it's just in very general terms and I think the Ombudsman herself will review her own office and procedures, hopefully, and maybe that'll be rectified.

**The Chair:** Any further comments? Seeing none, Ms Hutchison, I want to thank you for taking the time out to appear before us this afternoon.

**Ms Hutchison:** Thank you.

**The Chair:** I understand we're waiting for David Warner to appear. Can we have a five-minute recess, please?

The committee recessed at 1537.

1546

#### BOARD OF INTERNAL ECONOMY

**The Chair:** We have the Honourable David Warner, MPP, Chair, Board of Internal Economy, appearing before us this afternoon. Mr Warner, you have a half-hour. The committee would appreciate it if you would give us some

time at the end so that they may ask questions and/or make comments. Begin when you feel comfortable, please.

**Hon David Warner (Chair, Board of Internal Economy):** First of all, I appreciate the opportunity to be invited by this prestigious committee, an opportunity to reacquaint myself with some of the famous members of the House.

I'm not precisely sure what kind of information you are looking for, so what I will do is take about three minutes to describe the workings of the Board of Internal Economy, if that's of any help, and then we'll take it from there.

That mysterious and wonderful body known as the Board of Internal Economy is the body which oversees the spending of the Legislative Assembly. The board consists of the Chair, who is the Speaker, four members from the government and one member from each of the two opposition parties. By tradition it's been the three House leaders, and then the government can make selections; often it's the chair of caucus and perhaps a private member from caucus and perhaps a cabinet minister, but it doesn't have to be that way.

All of the spending estimates come before the board. Traditionally, what happens is that the person responsible for the estimate—in the case of committees, usually it's the committee Chair and the clerk—comes and makes his presentation, and the board members will ask questions.

The presenters will then absent themselves from the room and the board then will either pass the estimate, amend it, or send it back completely, whatever its wish is. In some cases, what it has done is make suggestions while the person was in the room and then just leave the thing in abeyance for a while and allow the committee to make the appropriate adjustments, and then send a piece of paper around to the board members asking them for their approval.

In the case of the Ombudsman, if I recall correctly, she came before the board and made her presentation, as all the other officers of the assembly do—there are six officers. Some questions were asked, mostly around the context of budget restraint, as: "Would it be possible to take a look at your budget and to make any further reductions"—she had already made some reductions—"say, in the non-staff side of things? Would that be possible?" But it was stressed at the board that the board recognized that the officers of the House are independent of government and that they are at arm's length from government. Therefore, what the board is doing would be to make requests with respect to budgets, because there is the fairly obvious danger, because the board ultimately controls the budget, of the board then directing the activities of the officers of the House. That's not something which the board, or indeed any member, really wants to do. So there are requests made.

The Ombudsman then went away, made some adjustments and those adjustments then were sent, by way of what's called pre-approval form, to the seven—well, six board members; the Speaker does not vote except in the case of a tie. It went to those other members, the six members, which is the standard way; the six agree. I should add



that in all of that process, the budget-setting and approval, it's been customary for some time to try to reach a consensus to avoid split votes on the question of budgets. It seems to work that way and it has worked. In this case, with the Ombudsman, there wasn't any particular problem.

That's, in a nutshell, the way in which the board functions. Then it simply publishes the results which are then public knowledge. They're available to everyone: the members, the press, the general public. That's it.

**The Chair:** Comments or questions?

**Mr Murdoch:** I have two questions to start off with. I hope we'll just go around and we don't have to use all our time. Mr Warner, my first question would be: In your mind, what do you think the standing committee on the Ombudsman is set up for? What were we set up for, our standing committee?

**Hon Mr Warner:** The committee has an interesting history, has interesting members, but that aside, originally this committee was set up as a select committee, quite candidly, for two reasons. One was because the office was new to Ontario, hence it was kind of mutual assistance to Mr Maloney, who was the first Ombudsman, and the members to try to work their way through the initial stages of having the office. It was a very useful function.

Second, because the number one issue of the day was an airport, which involved a lot of work by the Ombudsman at the time, in the north Pickering area, it was going to occupy a fair bit of time of both the Ombudsman and a committee, therefore a select committee was established.

The Ombudsman at that time issued a lot of reports, which is quite understandable because the office was new. I think as a result of so many reports being issued it was felt that there was a sufficient workload that would necessitate turning that select committee into a standing committee. Hence that was done. That's only my observation of history; somebody else might have a different view of it.

Periodically reports have come forward. But I think, quite understandably, the longer the office is around, the less need there is for a lot of reports. The committee then has to try to establish what it sees as its best cooperative working relationship between the public and the Office of the Ombudsman.

**Mr Murdoch:** I'll put a supplementary to my first question. I have a second one, but I don't want to lose my space.

We have the Ombudsman now. She makes a decision. We understand here that we're not here to change any decisions or defer a decision. But if someone complains to us, to this committee—and we've heard two already today, but we've had other complaints—that he felt that the process wasn't proper, do we have the right then to look into that process, nothing to do with the outcome but the process? This is where we're caught.

**Hon Mr Warner:** To be honest with you, I'm not really sure.

**Mr Murdoch:** We're going to have to find out.

**Hon Mr Warner:** Committees always have the ability to make reports to the House, regardless of what task

you're about, this committee or any other committee. In some cases with respect to the workings of the Office of the Ombudsman, the committee may feel it's appropriate to issue a report to the House.

I think, quite frankly, the relationship between the committee and the Office of the Ombudsman is one that has never been made very clear, just as the reporting mechanism for the officers of the assembly has not been made very clear except in a couple of instances. The Chief Election Officer is obliged to submit a report following an election. That's it. There's no other reporting that's required.

Second, there is nothing written down as to what's to happen to that report. The same is true of all the reports, from the public auditor or anybody else. There is an obligation in some instances to report, but there is no obligation to actually have the report dealt with by a committee or by the House.

My personal view of it is that's a flaw. I think that when an officer is reporting, there should be an obligation for the House, either as committee of the whole or a specific committee, to deal with that report. We use the term "debate," but it may be more of a discussion with, hopefully, some consensus-building with respect to that report. Just to leave a report to collect dust, it seems to me is not particularly useful. But we've never nailed that down.

In fairness, at one time there were no officers of the House and we now have six. Over time we've added on and on, so now perhaps it's appropriate to take a look at the reporting mechanism. When do they report, what do they report on and what will be done to the report when it arrives?

**Mr Murdoch:** Things seem vague and after 17 years maybe this is the time for this review. I think that in the Ombudsman Act she has to file a report once a year, to someone, as you say. What about the report we've just received and the special report to the Legislature? Are you going to give it any due regard?

**Hon Mr Warner:** My role is very clear and very simple, fortunately. I simply receive it. In this case, when the House isn't sitting, reports by any committees go to the Clerk. They are deemed to be tabled. When the House resumes, then I will simply announce that on a certain date a certain report was tabled. The moment it's tabled, of course, it then becomes public knowledge and is available to all the members. My only role in it is to ensure that no one receives the report ahead of somebody else, that all the members receive it at the same time and that members get it before the press. I think that's extremely important.

**Mr Murdoch:** That's not the case with this report, though. The press—

Interjection.

**Mr Murdoch:** I was going to say, maybe this one won't be given due regard, because I think the press had this one before we did.

**Hon Mr Warner:** We'll have to take a look at the system.

**Mr Murdoch:** I think so, because the press had this report before we did.



**Hon Mr Warner:** In theory, all the members should receive their document. The process is such that the only way for us to actually deliver the report is to put it in the mailbox downstairs. If the member happens to be away, fine, the press are in the building; they will get it the same day or that afternoon when it's gone to the members in the morning. If they're not in the building, then obviously they're not going to be aware of it.

**Mr Murdoch:** Some other questions for someone else.

**Mr Curling:** Maybe we should pursue the report and maybe get a better understanding, because if you understand how the reports are made—take, for instance, the annual report. Maybe I should go back a bit. The reason I think all this came about was that two years ago when we were reviewing the annual report of the Ombudsman, I think we had two. We hadn't even dealt with the year before, so they decided to deal with two of those annual reports. But when we sat with that, we felt like the dog who chases the car. We caught the car and then we didn't know what to do with it.

We decided to look at the report and then decided: "What are we going to do with this? Then we'll call the Ombudsman in." We found out, as you're saying now, that having looked at the report, we then make a presentation to you and say, "We have seen the report, Mr Speaker," and then we present it to you.

Let's go back a bit now. While we were doing that, and you knew that we were doing that as a committee, what did you expect of us to come forward with? Either that they were busy just looking at it and the recommendation coming forward: "We're not going to do anything with it," or—

1600

**Mr Mammoliti:** What a guy.

**Hon Mr Warner:** As much as I may have an interest in any of these subject matters, the relationship is between the committee and the House, not the Speaker, so that when you have deliberated on a report, then you're going to report to the House. The House will decide what it wants to do, if anything. But there isn't a specific role for the Speaker in that connection.

**Mr Curling:** I don't want to be facetious. I was wondering, while we were doing all that—even sometimes when we have a budget coming up in the summer, we want to know what we're going to do. We have to justify our action and even bring in the Ombudsman to the committee, justifying why we're here. It seems to me that doing all that was an exercise in futility. Nothing is going to happen. The Ombudsman can refuse to come before us. We don't see as a committee whether we serve any purpose.

My question then, knowing all that you said, that there were no decisions or any decision made on what we do with a report when it comes before us, would you recommend that we abandon, abolish this standing committee on the Ombudsman?

**Hon Mr Warner:** Well, I don't know whether it's my place to make recommendations. The committee will want to discuss that matter itself. I do think there's a useful role

for the Ombudsman's committee, but it probably is most effective when it works in concert with the person who is currently the Ombudsman.

Its role perhaps needs to be more clearly defined. That means tackling the legislation, the actual act, which of course means that it would have to be introduced in the House by the government. There would have to be a debate in the House in order to change the Ombudsman Act to clarify the relationship between the committee and the Ombudsman. Perhaps that's a useful exercise.

My observation is that over the years, the committee has served a useful function, but quite naturally, as the office has evolved, then perhaps the role of the committee changes too. At the outset, when it was a select committee and it was starting everything up, the main purpose was to try and find the best way to set up the Office of the Ombudsman. That's quite understandable. Its second function was to try and assist with getting the office going and to deal with a couple of the major problems. The role of the committee now is probably different. I guess the way it sits right now is that the committee serves as a committee to offer advice.

**Mr Curling:** To whom?

**Hon Mr Warner:** To the Ombudsman.

**Mr Curling:** But she won't come.

**Ms Akande:** Sends us a letter.

**Mr Curling:** My last question: I know you were anxious—

**The Chair:** Thank you very much, Mr Curling.

**Mr Curling:** Mr Speaker, that is your advice and I'm going to ask you for suggestions. While we decide if we should look to change the Ombudsman Act, which a minister, or the Attorney General, would put forward—it was tried already and I don't think it passed first reading anyhow, previously—while we're doing that and since we report to you basically, because the fact is that any report we have, when we present it to the House, is to the Speaker really, what advice would you give us on how to operate now?

**Hon Mr Warner:** Again, I'm not sure that you really need advice from me, because I really believe that committees have to wrestle with these questions themselves—

**Mr Curling:** We have been.

**Hon Mr Warner:** —and hopefully come up with unanimous agreement and a consensus.

I think there is a problematic question when you take a look at the relationship between a committee and the Ombudsman. Committees, as we have them structured, are always controlled by the government of the day in numbers, so there's always a public perception that in the final analysis, the government of the day will get its way in a committee, and barring a few exceptions, that has been the case over so many decades.

At the same time, this committee is different from other committees in that the Ombudsman is an officer of the assembly and hence enjoys an independent relationship, is at arm's length, and should not in any way be seen as a government department. How do you balance off this



power of the majority in a committee against the interest, the quite legitimate and valid interest, of having the Ombudsman at arm's length from the government if for no other reason than public perception?

It's a tough question, and I realize that; not insurmountable. Maybe in the case of the Ombudsman, the committee would want to look at a different balance for its committee in terms of numbers.

**The Chair:** Thank you very much, Mr Curling. Mr Mammoliti, please.

**Mr Mammoliti:** I'm next, am I, Mr Chair? Thank you. Welcome. I'd like to know a couple of things, Mr Warner.

I think we've already established accountability, and we've all, I think, recognized that the Ombudsman is not accountable to this committee. I believe the Ombudsman should be, to a degree. I believe the hands-off approach has to be there, but I also believe the Ombudsman thinks that perhaps the Ombudsman isn't accountable to anybody except the Ombudsman, and I think that's wrong.

I'd like you to answer this question: To whom is the Ombudsman's office accountable? Is it the Board of Internal Economy? Is it the Premier? Is it this committee? Is it the Speaker of the House? This question still exists and I'd like to just verify it before I ask my next question, if we could.

**Hon Mr Warner:** I don't want to beg the question, but I think you would have to define "accountable." In what way?

The Ombudsman, while clearly independent of the government, is fiscally accountable to the public auditor. The auditor will do the auditing both in terms of fiscal responsibility, but what is more popular these days—certainly with the auditor it's popular—is to do what I think is called "value for money" audits. In the programs that we're paying for, are you getting value for the money that you're putting in? It's a performance type of evaluation. The auditor is doing those kinds of audits with agencies, including the Ombudsman, so the Ombudsman clearly is accountable from a fiscal standpoint.

The funds for the operation come from the Board of Internal Economy. I can assure you that at the board—I think it was in June or July when we looked at the Ombudsman's estimates—the point was made that yes, we don't want to do anything to interfere or to be seen to be interfering in any way, shape or form with the independence of the office.

The board had, quite naturally, an interest in trying to conserve money, and it was asking every agency to take a hard look at its budget to see if there were ways that it could trim. If I'm not mistaken, the Ombudsman's office came up with about a 10% reduction over last year, as did other agencies. I mean, they all came in with reduced budgets. So there is a form of accountability that way.

1610

I guess ultimately, built into the act—Mr Callahan is, I think, the authority on the act—is that the Ombudsman can be removed for cause from office. The term of office is 10 years, if I'm not mistaken. The appointment is by the as-

sembly, which really means, usually, the government of the day, but I believe, by tradition, with discussions with the two opposition leaders to ensure that the selection will be one that isn't going to be opposed in the House, so that you've got a person who is acceptable to all three parties.

Having said that, the ultimate responsibility is to the public at large, it seems to me, as far as I know.

**Mr Mammoliti:** Okay, so she's accountable to the public at large. One of my concerns—I've made it very clear throughout my two years on the committee anyway—is the amount of internal complaints we've been getting as well. She's accountable to the public at large, and we find that there's a problem internally. I mean, ultimately that could be disastrous if we don't get to the root of the problem.

If this committee isn't accountable in that area internally, in terms of process and all that, then frankly I've got a little bit of a problem with that and think we probably have to address that in our recommendations later. That's not for you to say, but I recognize that.

The other point I want to mention is the report itself. Apparently it costs \$25,000. If the Ombudsman is fiscally accountable, perhaps you can explain to me why the report at this time and why so much.

**Hon Mr Warner:** That's not an appropriate question for me. You should ask that of the Ombudsman. All I can tell you is that any officer of the House has the right to issue reports whenever the officer feels it's necessary to issue a report. My only function is to simply receive the report and ensure that the proper procedure has been followed in terms of tabling and that, as I mentioned, all members have received it supposedly ahead of the media. But in this case it didn't happen. Members should be the first people to receive reports.

**Mr Owens:** Not having been a member of this committee for the past two years that have been described, I found that, in light of the meeting we had with you, Speaker, at the end of the last meeting of our Legislative Assembly committee where we discussed—I guess, in passing, you had met with the Office of the Legislative Assembly and it had indicated it was looking for a process where it could not only present its reports, as you've indicated, have them tabled, but ensure that there's some type of action, one of those people being the Ombudsman, Roberta Jamieson.

Coming into the subcommittee and finding that we're at this great impasse in trying to have the Ombudsman attend the committee hearings, I guess we have to be very careful about language like "accountability" and "reporting relationship" and things like that, simply because of the impartiality of the office. The Ombudsman, as an officer of the Legislature, reports to you. Would it not be more appropriate to have the issues around that office perhaps dealt with by the standing committee on the Legislative Assembly, as referred by you?

I think Mr Callahan or some other member opposite may have hit the nail on the head that perhaps this committee may have served a purpose at one point, but in the current generation of the Legislative Assembly, perhaps



another body, be it the standing committee on the Legislative Assembly, should deal with the issues.

**Hon Mr Warner:** First, you're right in terms of what I mentioned to the standing committee on the Legislative Assembly. It's been my feeling for some time that there's a lot of important and good work that's done by the officers of the House. Oft-times they produce reports and then the reports just seem to go into some black hole; we never see them again. I really think this does a disservice to those officers who toil quite hard and long on behalf of the public, on behalf of the assembly.

In the case of the public auditor, it's a little easier in that there's an automatic relationship between the public auditor and the standing committee on public accounts; it's even spelled out in the legislation, if I'm not mistaken. But that's not the case with the election officer, with the Commission on Election Finances, with Judge Evans, the Conflict of Interest Commissioner.

My only point was, regardless of who deals with it—and I think each of the six should be dealt with separately—decide that, number one, a principle will be that a report that is issued by the officer will be discussed. It can be discussed in the House. If you want to allocate, put it in the standing orders. You allocate a specific time when reports are going to be dealt with. Or it can be dealt with by a particular committee; it can be a standing committee. You can establish a select committee with a very specific mandate that it will meet certain weeks once a year or whatever; those are logistics.

All I'm saying is adopt a principle that the officers will report on a certain basis and that those reports will be dealt with, and then deal with the specifics about this committee and whether or not it should continue to exist, and if it does, what its relationship should be.

As you go through that and if you're able to work that out in harmony with the Ombudsman, then you come up against the question of whether or not you need to make any changes to the act. Maybe you can work out some kind of relationship between the committee and the Ombudsman without changing the act, but just so that it's clear and it's understandable.

Obviously, and I'm very sensitive to this, I realize that the question that all members come up against is whether or not what I say or do will have an impact on the independence of the office or if it will be perceived by the public as interfering in some way. Is the heavy hand of government now a stamp on that office? I realize that all members in the assembly are aware of that and they're sensitive to that, and that's the way it should be. But knowing that, you then have to work out the relationship. That's a tough one, and I acknowledge it's a tough one.

1620

**Mr Owens:** In my view, the questions I would like to see answered in terms of case load and tracking systems to ensure that cases are being done as expeditiously as possible I'm really trying to struggle with. How do you get that kind of information when the person who holds that information won't attend at your committee? I think these are

very non-partisan questions we're trying to understand here.

**Hon Mr Warner:** I don't know that you need me to instruct you about what the committee's capable of doing. Your clerk is certainly well aware and can advise you as to what's available to the committee.

**Mr Owens:** We discussed that earlier.

**Mr Callahan:** Mr Speaker, you've touched on something I think is important in terms of whether this act works and how it works. First of all, if you look at the act, the only teeth in it are that the Ombudsman can investigate the minister's decision or the bureaucrats' decision and they're given a chance to respond. If the response is not good enough, then they can tattle to the Premier. That's really what the act comes down to.

Over the years, I think it was Dr Hill who, without any requirement of the act or even anything of the Legislature, used to bring cases to this committee that couldn't be solved. That's how they started coming here, as I recall, and we would put them in our report. We'd put them in our report and it would be brought to the House and, as you say, it would get sucked up into the black hole. Nobody would ever debate it.

What in fact happened was that the ministers and the bureaucrats who had screwed up and were reported in our findings in our report never had any censure because nobody ever heard about it. It got shoved into the little drawer of wherever those reports go to. So you may have hit on a very significant point here.

I don't know how we do it, because I think everything in this place works on the basis of accountability. We're accountable to the public. If we screw up, we won't get re-elected. I think there has to be accountability here too, in that if you're going to have an act and you're going to tell the public out there through this act that the Ombudsman is the court of last resort, you have to do a number of things. You have to make certain that they're going to have some teeth, which I submit they don't have at the moment, particularly if there's no report debated in the House and nobody ever receives any censure for what they did do or they didn't do.

The second thing is that if it's just a circular—it's almost like a dog chewing its tail, because when it finally gets back to the Premier, if the Premier of the day, of whatever political stripe, decides, "Hey, that's rocky road. I'm not going to mention that or let that out of the bag, because one of my ministers has really screwed up," nothing happens. You come to a dead end.

The accountability, I think, would be if the report had to be debated in the Legislature, so that names would be used and you'd say the minister of whatever did this or this and didn't do this. Then there's accountability. The public gets to hear it, and the Premier of the day is then going to have to do the same thing he does in question period.

I'm not trying to be partisan here, believe me. If questions start being asked of a minister, that's sort of getting to the point where it's risky, you can either adjourn the Legislature or you can get rid of the minister. But I think that's what our whole system works on, accountability.



Quite frankly, the more I look at this act, I feel sorry for the Ombudsman, because I think he or she who occupies that office is probably trying to do a good job for people. All they're doing is sending the same letters we do to ministers of whatever political stripe and maybe not getting answers. It's very frustrating. So I think the act needs that.

Subsection 15(1) of the existing act allows the assembly to make general rules for the guidance of the Ombudsman in the exercise of his or her functions under the act. Maybe that's where we start, by setting some guidelines, but at the same time we have to put some responsibility on the part of the government to make sure that it has to respond to it.

I mean, we did a great thing in that report of the standing committee on public accounts. Was it ever debated in the House? I think the public is going to catch on to us one of these days. They're going to say: "You do all these reports. You travel around and spend megabucks to do it, and the report never sees the light of day and never gets debated in the House." I think that's a message that has to go out to whatever party is in power, that you've got to stop that.

I guess I make those observations. They're really not questions, they're rhetorical, but I think you've put your finger on something that is important, that if that report were debated in the House, if there were a sessional day for each report of each committee so they at least hear on television what the committee had done and let people comment on it and so on, then you put the pressure, an accountability, on the government of the day to call that as a matter of business for legislation or whatever.

**Mr Duignan:** Basically on the same topic, you alluded to the fact that there are six officers of the assembly who make reports, and really nothing happens to that. I know you have in fact written to the standing committee on the Legislative Assembly for it to review this and to look at ways of how we can improve the system and make those reports either debatable or whatever may happen to them; hopefully, the committee will begin to look at that task in the fall.

But also under standing order 104(h), which deals with the formation of this particular committee, couldn't you in fact change the standing orders? Couldn't the standing orders be changed to make reports debatable in the House, from this committee or any other committee?

**Hon Mr Warner:** Yes. There are different ways of accomplishing it. One is to change standing orders, which would compel a debate of a report. Picking up on what Mr Callahan said, rather than making it a responsibility of the government, I'd make it a responsibility of the House. That means standing orders; that it's in the standing orders.

You can specify the report of the Ombudsman, the report of the Provincial Auditor, the report of the election finances commissioner and so on and that they will be dealt with, and you can build in that this report will be dealt with by a particular committee, this one will be dealt with by the House, this one we will allocate a specific

time, as Mr Callahan mentioned, that kind of thing. But you can do it in the standing orders, sure.

**Mr Duignan:** In fact, the standing committee on the Legislative Assembly is empowered, either of itself or by a direction by yourself or indeed by a direction of the House, to review standing orders. For example, this committee could write a letter to the Legislative Assembly committee recommending that maybe this should be the approach that should be taken to debate the standing committee on the Ombudsman's report, or in fact any report from any committee.

**Mr Ramsay:** As you know, I'll inform the Speaker, we had a very thorough review by our researcher-counsel Paul Murray, who's here with us this morning. One of the things that came up was the Macaulay report as being one of the reviews that was done in 1989 of all government agencies. Mr Duignan had actually asked my colleague if we have that today. I believe all the members now have that report; I would refer all the members to that. I would hope that in the next two weeks we could find the time to really have the basic discussion about what I think we're embarking upon here, that is, the difference between independence and accountability.

Mr Macaulay's report, on page 6-8, really starts to spell that out:

"The Office of the Ombudsman is said to be 'independent' of the executive"—that's another differentiation between the executive and the Legislative Assembly—"but at the same time is 'accountable' to the Legislature. What should be observed, as I have said elsewhere, 'independence' and 'accountability' are quite different. When the word 'independence' is used, at most it means 'independence of decision-making'"—I'm sure all my colleagues here agree with that principle in regard to the Ombudsman Act—"and not 'independence of action.' The Ombudsman, like many administrative agencies, ought to be 'independent in his decision-making'"—as it was written at the time when there was a man in that position—"but he cannot be 'independent of action,' otherwise he is unaccountable."

There has to be accountability for \$9 million-plus of the taxpayers' money and it's only through the Legislature, and through this committee to the Legislature, to the people of Ontario, that that accountability is there.

1630

Macaulay goes on and states quite frankly in the bold print at about the middle of that page:

"May I say at once that the Ombudsman is not independent. If the Ombudsman is independent then there is no supremacy of Parliament." I think that's a very important principle, and we need to discuss that later on.

This is backed up by six statements, which we maybe could discuss at another time, that Macaulay brings forward to defend that principle. He sums up by saying, "Thus, clearly the Ombudsman is not only a servant of the Legislature, but he is not independent and is accountable."

I think we need to have a discussion some time in these two weeks. If we have agreement that those are the founding principles—because we seem to be floundering around a little bit about what our role is, and how independent and



how accountable the ombudsperson is, if you will, as we deal with that terminology. I think we have to get to the nub of the problem.

It's going to be very difficult for us to go beyond looking at legislation and how we're going to bring it into the 1990s—whatever changes; broadening of scope, if that's what's required—until we really, I think, settle upon the founding principles of what the relation is between that office and the Legislative Assembly of Ontario.

**Hon Mr Warner:** Yes, I agree with you. From my perspective, the best way to make that happen is when the committee can deal with it in an obvious attempt to reach consensus around the process and can do it in concert with the Ombudsman; always, as you've very clearly stated, assuring the public that there is no intention here for interference with the independence to make decisions.

**Mr Ramsay:** That's correct.

**Hon Mr Warner:** Otherwise, the public loses faith in having a neutral body to which a person can go with a complaint about government. If you lose that, you've lost a lot. The office was set up with the purpose in mind of serving the public in a way that the public could have trust that a complaint would be investigated in an independent fashion and that government would not hide anything when the investigation was taking place, that it would be an honest effort to get a resolution of the problem; noting of course that not all problems are going to be solved and not everybody is going to be happy, because that's the nature of handling complaints.

I don't envy your task, but it has to be done, it seems to me, otherwise the committee doesn't function well, the Ombudsman is unhappy, nobody is happy with the results and the public maybe loses faith in the whole process and in the Office of the Ombudsman, and that would be a tragedy. You're right, tackle this in the report. I haven't read the report, but it seems to me it's probably a good basis to start on.

**Ms Haeck:** Thank you, Mr Warner; I'm going to call you David because I'm more used to that. I'm not sure you've had a chance to really look at the Ombudsman's special report. On page 2, close to the second-last paragraph, she makes reference to the public relations campaign, the merry-go-round of Queen's Park. I know you're aware that a number of members on all sides of the House had expressed some concern about it.

She also makes reference to the fact that: "This information was fully presented in a special presentation to the Board of Internal Economy of the Legislature. In the end, I do not know the basis for the negative comments."

I am aware of comments coming from people like Dianne Poole, who raised the issue in a member's statement. I understand, from being at the luncheon you sponsored where we all had a chance to question the six officers of the Legislature, that Hugh O'Neil in fact raised this very issue with the Ombudsman.

I myself returned the posters and have never used them and will not use them. I concur with Miss Poole. I feel that I and my office work exceedingly hard to achieve the best results for my constituents and if and when I come up to a

large obstacle, which does happen on occasion, I have no hesitancy to refer that constituent to the Ombudsman's office, so I don't view it in the same way.

I guess my general sense of the public view is that they'd just like to get their situation resolved. They're not always as worried about impartiality, maybe, as the legal minds or some other folks might be. They basically want to get their situations taken care of as expeditiously as possible and not in 14 years, as we have heard from at least one presenter before us.

I'm wondering, when the budget is brought forward to the Board of Internal Economy, what kind of analysis is done. We have \$25,000 spent on this, which was in my estimation probably not an ad hoc expenditure, because it does take some time to get these things to a printer and prepared and all those kinds of things, as well as the estimated \$250,000 for the merry-go-round public relations campaign. Were there questions asked on those expenditure proposals, and what kinds of answers did you get? Are you free to discuss those very questions?

**Hon Mr Warner:** The board dealt with the Ombudsman in two separate ways, first, with the budget estimate when it was brought forward and, second, with the advertising campaign. That was on a separate occasion.

With the budget estimate, Ms Jamieson came in and made her presentation. There were a number of questions from members, basically fairly standard questions around staff complement and whether it would increase, merit pay, salary increases and so on, and whether it would be possible to chop any more money. That was essentially it.

I think the board—I hate to speak for other members, because there are six board members and they all ask questions. Maybe they viewed it as the auditor does the auditing of program and how money's spent, whether or not you get value for your money and whether it's appropriately spent or misappropriated etc. That's the public auditor's job, so no one wants to second-guess that, and it's in capable hands.

Looking at the overall budget: Is the overall budget in line? Is it necessary to add staff? Is it possible to hold the line on increasing the staff? Is it possible to hold the line to the standard 2% or 3% salary increase? Is it possible to effect savings somewhere in the operation? All those questions were answered in the affirmative, so that was how the budget was dealt with.

On the advertising campaign, the Board of Internal Economy wanted whatever information the Ombudsman could share about the campaign: why it was generated, how it was put together, who put it together and so on. She answered all those questions and that was the end of it. The board said, "Fine, thank you very much."

It's a tricky line. Certainly the three House leaders and the other members, the government members here on the board, made Ms Jamieson very aware that they didn't want to ask questions that in any way would appear that they were trying to interfere with her right to run her office and to do her job, but they were asking about the advertising campaign because a number of members had raised concerns.



You're right: We had that meeting; we had two of them, actually. All six officers were there. It was an opportunity for private members to ask questions and get to know the officers of the assembly—we all know Judge Evans; we all get to see him at least once a year—but to know the other officers and what they do, what service they provide and so on. So it was very useful in that context.

A number of members asked Ms Jamieson about the advertising campaign, and she responded to them and answered their questions. In my observation some were satisfied, some weren't, but she did answer the questions as posed, and similarly when she came before the board she answered the board members' questions and that was the end of it.

1640

**Ms Haeck:** If I can pursue this one step further: I don't have all the staffing figures in front of me, but I know that at least this committee is aware there has been some substantial staff turnover in the last couple of years, and in fact, one office has not been well staffed for some time, until quite recently. Is that something that the Board of Internal Economy is aware of and would ask some pointed questions about? We're all interested in service to the public, that's obviously what we provide all the time—or at least try to—and if you are aware of these situations, would you take that on as a route for questioning?

**Hon Mr Warner:** You'd have to ask the board. I don't know what the response would be. Traditionally, what the board does when one of the officers or the assembly itself comes before the board with a request for staffing, then the board will ask for justification: "Why are you wanting to turn this job into a permanent job? Why are you wanting to add complement?" If the person can't satisfy the board that there's a legitimate reason for this that's very pressing, then the board says, "No, we're not increasing staff."

**Ms Haeck:** So you're not aware of, say, an increase in severance packages or the fact that there may be vacancies there for an exceedingly long time, or how service might be provided if—

**Hon Mr Warner:** Not necessarily, no. The question of severance would be a bit different. If there was some problem with respect to severances or salaries, that might find its way to the board, but it would be up to one of the board members to ask to put it on the agenda to begin with and there would be a discussion of it.

**Ms Haeck:** So really, again, a broader awareness would have to be there so that this—

**Hon Mr Warner:** Yes, and the board would want to know whether this was an internal matter or something that deserved their attention, and again, obviously being sensitive to the question, if it's purely an administrative matter then does it really belong before the board or is it really the responsibility of the Office of the Ombudsman. The same is true of all the other agencies, including the public auditor. The public auditor came before the board, presented his figures and was asked to cut back, and indeed did.

Interjection.

**Hon Mr Warner:** With fear and trepidation, members suggested that he cut back a bit. As I say, it was, in a way, a difficult process but a very rewarding one. At the end, every single agency had reduced its budget, including the assembly, of course. I don't know if that's any help to you.

**Ms Haeck:** It does clarify at least how things evolve, which explains why maybe some situations have happened and why we may now find ourselves asking some questions and really not getting the answers from the Ombudsman's office. Generally it's just sort of fallen into the black hole.

**Hon Mr Warner:** Sure.

**Mr Villeneuve:** I won't be too long. Mr Speaker, the Board of Internal Economy seem to have the almighty power here in that they can dictate or they can suggest funding and budgets, but they would not have the mechanisms that this committee—as a committee of the Ombudsman—has. Would you agree with that?

**Hon Mr Warner:** The mechanisms? In what way?

**Mr Villeneuve:** Mechanisms for hearing some of the problems of constituents.

**Hon Mr Warner:** Oh, yes. The board's function is primarily financial, fiscal, to take a look at the budgets. There are other matters that are brought before the board, complaints by individual members with respect to carrying out their duties, so occasionally there's a question raised in the House about some member's householder and whether it had appropriate material in it etc. That kind of thing comes before the board, but other than that, no, the board is not going to be dealing with the kinds of things that this committee would deal with or that the standing committee on public accounts would deal with, with respect to the public auditor, or the Legislative Assembly committee deals with the Information and Privacy Commissioner.

**Mr Villeneuve:** Accountability is always important—accountability for money, of course, and the Provincial Auditor and the Board of Internal Economy. But accountability to the public at large, I think, is most important, and I think this is what's basically being discussed right now. We've had some people in today who explained to us some of the problems—I think we need to hear that—and the existence of this committee has been questioned.

I say accountability has to go back to the public, be it through a committee of the Ombudsman, be it standing or select, or a committee of the Legislative Assembly. If indeed it's possible to be non-partisan in this place, I think both of those committees would tend to be non-partisan. I've been around here for almost nine years and I've noticed that under governments of three different parties, and I respect that. The perception out there is always that, well, you're always political. Well, we can be otherwise from time to time.

I think we've assisted the Ombudsman, and it may not have been the present Ombudsman, but in the case of Farm Q—I recall that one very distinctly because I was involved as a substitute member. I think it was only right, because the Ombudsman's office went as far as it could



and then it came back to this committee. Again, after a lot of deliberation, recommendations came forth. That's an example of why I think this committee, or something similar to it under Legislative Assembly or somewhere else—so accountability, I think, is number one.

I'm disappointed with the Ombudsman's letter here because a position of conflict has been taken with this committee, and it was never intended that way. I think what we have to look for here is this committee being complementary to the Ombudsman, and the *modus operandi* being where we can suggest improvements and where people indeed have the opportunity of coming and saying, "These were my experiences." Of course, satisfied customers are not likely to come, and that's fair game; that's why we're here.

So in your opinion this committee very much has a legitimate place, and if indeed it's not this committee, then I would strongly recommend, strictly because of accountability to the public, that it be looked at by Legislative Assembly or a select committee.

Could I have your comments? It's a leading question, but those are my feelings.

**Hon Mr Warner:** I don't want to appear either repetitive or evasive, but this is a standing committee of the assembly; that's in our orders. It's there; it exists. I'm a strong believer that committees should be, as much as possible, in control of their own agendas. Committees should have the opportunity to discuss among themselves how they see and define their role.

The committees are responsible to the House. If the committee goes off on a tangent, then the House will bring it back. The committee gets working, and when a committee goes off the rails a little bit the House will put it back, so there is a check and a balance.

This committee will have to find its own way in terms of how it sees the mandate within the standing orders. My only observation is that the role of the committee has changed from its inception, when it was first a select committee, to this date. That's natural. There's nothing wrong with that. Indeed, I suspect that the role of the committee will change over the next decade, as indeed, perhaps, all of our roles change.

In a previous Parliament there were no constituency offices. Members were called upon on occasion to help constituents, but they had no staff and there was precious little way to assist a person, other than down here. In fact, if you go back a little further, as Bob Nixon will tell you, you always came to work with a supply of nickels so you could go out and use the pay phone to call some of the government ministries on behalf of your constituents and call back your constituent.

We've gone to the route now where the members are ombudsmen in their own constituencies. You have all kinds of constituents come in with problems, and every member does his or her best to help their constituents and you act as an Ombudsman. At some point you reach a stage where you say: "I can't help you any more and I'm going to suggest that you go and see, maybe, the Ombudsman or maybe somebody else or the workers' advisers with the Workers' Compensation Board, or you might have

to go and see a legal aid lawyer. You might have to see somebody. But I've tried to help you and I can't help you any further." So the members' roles have changed, the officers' roles have changed and indeed the committees' roles have changed. All I'm saying is that as we go through that, in turn we should look at our committee structure: the size of the committee, the composition of the committee, what it does, how many committees we have and what their functions are.

1650

I know this is out of context in a way, but just one observation: The two largest single budget items we have for any government are Health and Education. We do not have a committee to deal with either. I'm puzzled by that, but anyway, that's the way it is. Twenty years ago there was probably no need to have a Health committee, but things change, and as they do, then the parliaments have a responsibility to change as well. It's in this context that you have to wrestle with the question about the existence of the committee, its function, its role and its relationship to the Ombudsman.

The best of all worlds is to have a concerted effort between all the members on the committee and the Ombudsman working together cooperatively to come up with a consensus on this relationship. In so doing, you'll have to take a look at the Ombudsman Act and you'll have to take a look at the standing orders to see whether or not you might recommend any changes.

**Mr Villeneuve:** I see this as very much part of the job of this committee. It's a bit like having members set their own salaries. We've always been a difficult situation to deal with. I think we're here to assist the Ombudsman in doing the work that has to be done from that office to facilitate—I'm sure there are times when the Ombudsman reaches, as in Farm Q, a situation where he or she cannot handle it any more, and it comes back to the committee, rightly or wrongly, and a decision is taken. I think that's the reason for this committee to exist and the reason why it must continue in one form or another.

**The Chair:** Mr Perruzza, could you please make it brief.

**Mr Perruzza:** Again, I apologize. This is my first day here and I don't have a very full understanding of the Ombudsman and the office, but I have read very quickly through the act today.

My question will actually be shaped in the form of an opinion-seeker of the Speaker, to ask him very directly if he thinks it is appropriate to essentially have an individual—and I agree with him that the Ombudsman's office should be something independent from government and certainly beyond reproach if it is to work as it's mandated and set out in the act. I think that's the way it should be.

But I also feel that, in some way, there should be some kind of accounting mechanism. It seems that through the budgetary process there is some accounting, but it's not the kind of accounting that I think any government or any elected body would be satisfied with, given the importance of this particular office and given that the Ombudsman is appointed for 10-year terms. I suspect that only under very



extreme circumstances can the Ombudsman actually be removed from office or questioned in any way. They can basically use discretion to take on and tackle any issue they deem fit and pursue it as far as they deem fit and recommend whatever they deem they should be recommending to whatever. And rightly, as my colleague from the Liberal Party was very perceptive in assessing, the buck will ultimately stop either in the minister's office or in the Premier's office in terms of any report or recommendation or opinion that's generated by the Ombudsman.

Given that, my question to you, Mr Speaker, is: Do you think that it is an appropriate thing to continue with the Office of the Ombudsman, or should we be pursuing other venues or establish a process or structure whereby the Office of the Ombudsman is held more accountable to the Legislature and to this committee?

**Hon Mr Warner:** Obviously this is a fundamental question which the committee is going to wrestle with. All I can do is offer you my observation that it was seen there was a need identified for the office to be established, as it has been established in many countries around the world. The assembly did its best, I think, in a very non-partisan way, to find the kind of office arrangement that would meet the needs of the people of Ontario. It looked at how the Ombudsman functioned in various countries and tailored all that information to our situation in the province of Ontario and established the office.

I don't see that the need has disappeared, but because over time things change, obviously you have to change with them, and so you're always doing program evaluation. Companies do it, governments do it; indeed members, I'm sure, do it. My office functions differently today than it did in 1975, because you periodically review how you do things and you make adjustments. The Ombudsman's office is no different than anybody else's in that regard.

No doubt the public auditor does everyone a service when he goes in and does a performance evaluation or whatever it's called. I've probably got the wrong term. But when he goes in and does that value-for-money audit, it is extremely helpful to any organization because you have an outside agency come in, take an objective look, and say: "Look, in good faith, you spent X dollars hoping to get Y results, but you didn't. You got Z results, which were less than Y. Here's what you could do to tighten the program up and get better value for your money spent." That's really helpful, and it means then that you can do it.

This is a large organization we're talking about, and it's complicated, and they're dealing with tough problems. A lot of the time they're dealing with problems that you and I can't solve. That's why these folks have gone to the Ombudsman; we can't help them. So it's not an easy operation. As far as I can see, it's a service that's certainly needed.

I come back to where I started: The trick of it all is that this committee has to find a balance, and it has to be able to also find a good working relationship between the Ombudsman and the committee. That's not an easy task, I acknowledge that, but that's why we got the best members of the assembly to be on this committee, right?

**Mr Callahan:** I'm only a sub.

**The Chair:** Thank you very much, Mr Warner, for taking the time out of your busy schedule to appear before us this afternoon.

**Hon Mr Warner:** This was far quieter than the House. Thank you very much.

**The Chair:** Just before we adjourn for the day, the subcommittee members should note there is a meeting at 9:45 in this room tomorrow morning. We will adjourn until 10:00 tomorrow morning in this same room.

The committee adjourned at 1659.















## CONTENTS

Tuesday 18 August 1992

<b>Review of the Office of the Ombudsman</b> . . . . .	B-3
Robert Gateman . . . . .	B-15
Margaret Hutchison . . . . .	B-21
Board of Internal Economy . . . . .	B-27
Hon David Warner, chair	

### STANDING COMMITTEE ON THE OMBUDSMAN

- \***Chair / Président:** Morrow, Mark (Wentworth East/-Est ND)
- \***Vice-Chair / Vice-Présidente:** Haeck, Christel (St Catharines-Brock ND)
- \*Akande, Zanana L. (St Andrew-St Patrick ND)
- Drainville, Dennis (Victoria-Haliburton ND)
- \*Duignan, Noel (Halton North/-Nord ND)
- Henderson, D. James (Etobicoke-Humber L)
- Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
- Miclash, Frank (Kenora L)
- \*Murdoch, Bill (Grey PC)
- \*Perruzza, Anthony (Downsview ND)
- \*Ramsay, David (Timiskaming L)
- Witmer, Elizabeth (Waterloo North/-Nord PC)

#### Substitutions / Membres remplaçants:

- \*Callahan, Robert V. (Brampton South/-Sud L) for Mr Henderson
- \*Curling, Alvin (Scarborough North/-Nord L) for Mr Miclash
- \*Mammoliti, George (Yorkview ND) for Mr Johnson
- \*Owens, Stephen (Scarborough Centre ND) for Mr Drainville
- \*Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC) for Mrs Witmer

\*In attendance / présents:

**Clerk / Greffier:** Carrozza, Franco

**Staff / Personnel:** Murray, Paul, committee counsel and research officer, Legislative Research Service





ISSN 1180-4300

## Legislative Assembly of Ontario

Second session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 19 August 1992

### Standing committee on the Ombudsman

Review of the Office  
of the Ombudsman

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Mercredi 19 août 1992

### Comité permanent de l'ombudsman

Examen du Bureau  
de l'ombudsman



Chair: Mark Morrow  
Clerk: Franco Carrozza

Président : Mark Morrow  
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### **Table of Contents**

Table of Contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

### **Index inquiries**

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La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 19 August 1992

The committee met at 1409 in room 151.

### REVIEW OF THE OFFICE OF THE OMBUDSMAN

**The Chair (Mr Mark Morrow):** I'd like to call this committee to order. For the viewing audience, I'm Mark Morrow. I'm the chairman of the standing committee on the Ombudsman.

DONALD R. MORAND

**The Chair:** We're here this afternoon reviewing the Ombudsman and before us this afternoon we have the Honourable Donald R. Morand. You have an open afternoon to make a presentation, sir. Although I've already read your name, could you please read it into the record and begin when you feel comfortable?

**Donald R. Morand:** Thank you very much, Mr Chairman. First of all, my name is Donald Morand. I have had some experience. I was nearly five years as Ombudsman of the province of Ontario. I had some 20 years on the bench before that.

When I first received the invitation to come here, my initial reaction was to refuse. Mr Carrozza called me up and explained to me that this was a hearing as a result of a motion put to the Legislature and granted by the Legislature setting out the different scopes under which the hearing was to be held. In view of that, I felt I had a duty to come and express to the committee my views on the Office of the Ombudsman.

Having spent some approximately five years doing the actual work, I have some firsthand knowledge of the Office of the Ombudsman and some firsthand knowledge of the difficulties of being an Ombudsman, as well as certain rather strong views as to how the office should be run and what the powers of the Ombudsman should be.

If you look back at the history of the population, the citizens of the community, dealing with their government and dealing with the employees of the government, for many, many years, you, the members, acted as ombudsmen. You got complaints from your constituents, saw the different boards, saw the different offices and attempted to arrive at a satisfactory solution to the problem of your constituent. You were handicapped in many ways in doing that because you didn't have sufficient powers.

In Ontario, it was decided that the ancient system of Ombudsman was a way to get around this and to give to that committee certain powers which you, the individual members, didn't have. In order to do that, a very thorough study was made across the world of the office of the Ombudsman. It's interesting to note that the office of the Ombudsman was first started not to inquire into complaints of the people as to their individual cases, but complaints of the citizens as to corruption in the force, the employees, of, at that time, the King, who was an absentee King. He got

complaints of corruption among his employees who were working for him and controlling the government. He appointed an Ombudsman to inquire into that corruption.

The system worked and it grew and it eventually came to the western world—it started in Europe—particularly in Australia. In Australia, they developed a slightly different version of the office of the Ombudsman. The idea was that there would be an individual investigation of each complaint. Now, that's different from the mainly European system. To do that, certain things necessarily followed. There had to be legislative ability to do the job.

In Ontario, hearings were held and a committee was formed. They actually circled the world looking at different places. They drew up an act which they hoped would solve the problem and give the Ombudsman sufficient powers to do his job and give sufficient protection to the employees of the province—the boards, the agencies—so that they could get a fair hearing as to their answer, because it was intended, and is still intended, and the act says so, that the Ombudsman is a last resort. In other words, you only come to the Ombudsman when you've exhausted your other recourses. In other words, you've lost your case, you've been held not to have a good complaint against the government and there's one last hope, this person called the Ombudsman, who may decide that you have been improperly dealt with.

That person was intended originally to be absolutely independent, certainly not to be under the control of the Legislature nor under the control of particular parties. He is responsible to the Legislature, yes, but he applied his brand or her brand of justice to the cases that came before him.

When the act started in Ontario, Arthur Maloney was the first Ombudsman. He was snowed under by complaints. He had three major complaints right off the bat involving Pickering airport and a number of others, and the office got snowed under. He was starting from scratch. He was hiring employees who knew nothing about this.

He asked and received the assistance of the Legislature in the forming of a select committee. The select committee was intended to help the Ombudsman do his job.

In the course of what I'm going to have to say, I don't want anybody to take it wrong, that I'm complaining. I'm telling you what developed and where I think what developed was wrong.

I think, first of all, too much jurisdiction was given to the Ombudsman. The present Ombudsman isn't going to like me for that, and probably many of the employees aren't going to like me, but I think the Ombudsman is spreading itself too thin.

Secondly, I think that as a result of the select committee being appointed—the members, being who they are, naturally are ombudsmen in their own right and in their



own thought. They forgot that they were not the Ombudsman. The select committee helped and intended to help the Ombudsman, but as time grew, there began to be a conflict between the select committee and the Ombudsman, Mr Maloney at the time. It ended up in a fight and Mr Maloney left.

I was appointed and came on the job with insufficient knowledge of the Ombudsman, and I had to learn. It took me a good year to learn the job. Before my term was over, I found myself in conflict with the select committee, which had become a standing committee. I can understand members of the Legislature, because by the very nature of the office to which they were elected and because these people are their constituents, they naturally want to get into the fray. But in my view, the purpose of a standing committee as well as a select committee is to help the Ombudsman when the Ombudsman has asked for help, not to supervise the Ombudsman.

I only had one day to prepare for what I was going to say here today and to read certain material, the material which was sent to me. I also got a copy of the report of the existing Ombudsman and have had an opportunity to read that. But that's the only material I've had and the only opportunity I've had to review this material.

I submit it is vital that the Ombudsman, if there is going to be an Ombudsman at all, must be completely independent. When I was here, there were questions on money matters put to me by the standing committee at that time, and I refused to answer. I notice once again the question is raised of whether this committee should ask about money matters. I don't believe there is a standing committee dealing with the auditor, but I can't imagine anybody telling the auditor, "Go back and do another audit." I can't understand anybody except the Legislature itself, by motion, interfering with an audit, and yet, ladies and gentlemen, that's what you're doing.

I read the report you have. I just opened it to different pages. I was reading it rather quickly and I came to certain things. There were resolutions by this committee that the Ombudsman interview people to consider re-examining a case and so forth.

The Ombudsman must be the final arbitrator or why have an Ombudsman? I submit to you, gentlemen and ladies, that it is not this committee's decision, duty or responsibility to inquire how the Ombudsman does his job or what decisions he comes to. Now, I know you say, and I've read it in the material, "We don't want to tell the Ombudsman how to do his job." But in effect you are.

I notice, once again, that the question came up of whether you should review the financial affairs of the Ombudsman. The Ombudsman gets his money through—I've forgotten the name of it now, but it's a committee of all members of the House. He gets his budget, it's gone over, he's audited by the auditor and I believe he still goes before the public accounts committee. Why does the Ombudsman need to have another committee examining his or her expenses?

There is an old saying, "He who pays the piper calls the tune." This committee, if it has the power to control the expenses of the Ombudsman, has the power to call the

tune of the Ombudsman. That's directly contrary to what was intended when the legislation was passed.

1420

One of the things that always bothered me as Ombudsman was the question of justice. Justice is what we all say we want. I found most people didn't want justice; they wanted mercy—myself included. Most of the people who come to the Ombudsman want mercy. They don't want justice.

The Ombudsman has to administer justice as he or she sees it. Ombudsmen come in all kinds, shapes and descriptions and from all over the world. There are Muslims, there are blacks, there are whites, there are all kinds of them, but basically the justice that is administered by the Ombudsman is the commonsense, ordinary, everyday justice. But he must or she must give the justice that he or she thinks is right. That's why they were appointed.

Since the person who comes to the Ombudsman has already lost his case, he is functus, there's nowhere he can go. They're finished. They now go to the Ombudsman and, as I submit to you, the Ombudsman's job then is to look and say: "Did this person get a fair deal, as I see it? Not as anybody else sees it, but as I see it." He then or she then decides yes or no.

If she says or he says no, it's my submission that's the end of the case. The case was already lost before it came to the Ombudsman. The Ombudsman has looked at it, investigated it and said: "No, I don't think you got a bad deal. I don't think there's anything that should be done for this." Finished, end.

Because of the way society has grown today and because of the views of the people, they always say, "There's another level that I can complain to." Let me give you an example. A man didn't get a job that he felt he should get; somebody else got the promotion. He went to his boss and the boss said, "No, he is entitled to it." He then went to his boss's boss who said, "No, the right man got it." He then grieved to his union and the union said, "No, the right man got the promotion." He raised so much Cain that he got a hearing at the international level and he lost that. He then complained to the Human Rights Commission that he didn't get a fair deal because he wasn't white and the person who got the promotion was white.

After a two-and-a-half year hearing, it was decided, no, the right man got the promotion. He didn't have any legitimate complaint. Race didn't enter into it. He then came to me and complained that he didn't get a fair hearing before the Human Rights Commission. I examined it and found that, in my view, he got a perfectly good hearing. He got a far longer and better hearing than he was entitled to. He wasn't happy with that so he complained to the select committee that I didn't do my job properly. The select committee found, yes, I had done my job properly. So then he started writing letters to the media, to the Premier, to the Prime Minister and to everybody else.

I tell that story to point out that people get the fixed feeling in many cases, "I've been badly done to." It doesn't matter who tells them differently, they're never going to change their minds and they're always going to feel they were badly done to. That is why it is my submission



to you, as members of the select committee, a standing committee now, that you should not be interested in complaints about how the Ombudsman does his job. I submit it's not your place.

The Ombudsman is supposed to be the court of last resort. If you listen to complaints and call the Ombudsman in and say, "Why didn't you do this or do that or reinvestigate or something," then why have an Ombudsman? Why not just hire an employee of this committee and have that employee do what it wants him to?

I could go on, gentlemen, for hours. I don't want to outstay my time. I'm certainly available for any kinds of questions you want to give me. I'll do my best to answer them.

**The Chair:** Thank you very much, Mr Morand.

**Mr Morand:** Don't hesitate. You can't hurt my feelings. They've been hurt by experts.

**The Chair:** Comments or questions? Mr Owens, please.

**Mr Stephen Owens (Scarborough Centre):** I'd like to begin, sir, by thanking you for appearing today. Your sage counsel is always welcome at this place. I would also request, if you have the time and are so moved to put more thought into some of the questions that have been asked of you in this process, if you could send us a letter on some of the things you may not have had time to take up.

**Mr Morand:** I can run over them right now if you wish.

Has the need for an Ombudsman changed since its creation in Ontario? Yes, of course it has. The need for an Ombudsman for every office always changes. You have far fewer meaty complaints today than there were when I first came in. When I took the office, there were 2,800 open files plus three major investigations going on. Some of them hadn't been looked at for two or three years. They would come to the office and they were sitting in a file.

It took me nearly five years and I got that down to 800 files, and I understand it has remained pretty much at 800 files ever since. But we got rid of practically all the old files. I must say that the people in my office worked many long hours of overtime getting these done. We got rid of the big files.

But there will be changes. Today there are jobs being done by the Ombudsman which I think are redundant. The Legislature, over a period of time, has instituted review processes. In just about every area there is now a review process which persons who are aggrieved can go to and have a hearing, a review, to see whether they are entitled to some relief. If they've been turned down, then they go to the Ombudsman.

Because of that, I think the citizens should not automatically have a right to go to the Ombudsman. There's a right of appeal for the quasi-judicial boards. You hire experts to run the quasi-judicial boards. You can't expect an Ombudsman employee to be an expert in every field that comes along. I had experts in pensions. I had different experts with expertise, but you can't have expertise in everything that goes on.

The Legislature hires boards with people with specific expertise. We would not overturn a board's decision because we didn't like the decision. I think that's very important with the Ombudsman: It doesn't matter whether you agree with a quasi-judicial board or not because, again, whose justice are you administering, the board's justice or your justice? Is the Ombudsman substituting his opinion for every other expert's in the whole province?

But I think there must still be a power to go, because in every case people can fall through the cracks. There is in every administrative procedure an opportunity for people to get caught between two conflicting regulations and it happens. It happened when I was there and I'm sure it's happening today. I'm sure the Ombudsman today is running into these things and correcting them.

It's an unfortunate fact that only those people who aren't happy with your decision do anything further. They complain. Those people who are happy with your decision never stop—well, I shouldn't say "never"—but you might get 10 letters of thanks over the course of the year if you've ruled in favour of two or three hundred; 10 might take the time to thank you.

But, yes, there is a change, and as the administration of government changes you'll keep on changing. So there is a necessity to review, in my opinion, the powers of the Ombudsman from time to time. For that reason, I think this review is a worthwhile thing.

Again I differ a little bit. I think we've spent too much time investigating primary complaints by people who are aggrieved. I think a greater position can be played by the Ombudsman if he or she has time—since I've known the office, they've never had time; they've been trying to catch up on the backlog—to investigate faults in the system and report to the Legislature so that the Legislature can take a look at these, not to correct individual complaints but something that's going wrong in the whole system.

I think more time of the Ombudsman should be spent on that. As far as I know, practically none of it has been. I can remember a couple when I was there. We had one problem at one of the jails that was rather bad. We cleaned that up. But more time of the Ombudsman should be spent on that and less on individual complaints.

1430

I don't know what it's like today, but when I was there, we had big boxes, each with an institution's name on it, and any time a complaint from an institution came in, it went in that institution's box. We had men or women going around to the different institutions on a regular basis. They would go to the box, take out the complaints and go and see what they were all about.

I don't want to be ridiculous, but we got such complaints as: "We didn't have toast for breakfast today. Why?" and all those kinds of complaints. Mixed with them were some legitimate complaints, some complaints that we had to look at. Somebody must sort those out, and it's my view that the Ombudsman must have an unfettered discretion to say what she will investigate or what she will not investigate on her own motion; she has that absolute discretion.



That's not going to be—there are people who will go to the Ombudsman and say, "Hey, why don't you investigate mine?" I was sued many times because I said, "That's a frivolous and vexatious complaint, and I'm not going to investigate it." So they'd sue me. I'd turn it over to the government's lawyers, and they'd quash the motion. I never lost one, but if you didn't, you had in every person with a fixed complaint in mind wanting you to review.

I had people who came back at least once a year asking me to review the same complaint. I had one man who did nothing but deal with these people. Unfortunately when he retired, I could never replace him. He was a past master at them. They all thought he was wonderful, and he was, but they'd come back year after year making the same complaint all over again. They'd forgotten that they'd complained. They'd forgotten they'd been in our office. But every now and again one of them had a legitimate complaint and you had to look at it.

Another unfortunate thing is the most miserable people usually are the ones who have the complaints. The most difficult, miserable people to deal with are the ones of whom somebody in the civil service says, "I'll show you, you so-and-so," and they're the ones who have a legitimate complaint. The Ombudsman can't just run them off. He has to look at them and say, "Has this person got a legitimate complaint?"

To speed along a little bit, independence: I don't think you have to be independent. I think I've perhaps dealt with that.

The question of whether the Ombudsman be called Ombudsman or Ombudsperson or Ombudswoman leaves me cold, quite frankly. I'm not a woman, so I see no concern. If the women want to be called Ombudswoman, I've no complaint. Again, I guess because of my age, because of the world I grew up in, I am perhaps not as enlightened as some people are as to the subtle nuances of the growth of women, although certainly had times been better when I was a young man, I'm sure my wife would have ended up a brain surgeon, but she couldn't afford it. Certainly I practised law with many lawyers when I was a young man, darned good lawyers, who were women. I'll take from women the fact that they were discriminated against and are discriminated against, because I'm not a woman and I can't tell. If they tell me they are, I'll believe it, but that's getting off into another field.

Appointment term of office: I think 10 years is a good term. Five years is not enough; you're just getting into the job. A lifetime tenure is too much; you don't want to tie yourself up. I left the bench after 20 years because I had made speeches for years saying that it took a very unusual man to be a good judge for more than 20 years. When 20 years arrived and Mr McMurtry offered me this job, I took it and put my actions where my mouth had been all these years, because it is difficult to remain doing any one job and be fresh for any particular lengthy period of time. I think 10 years is ample. I don't think it should be a lifetime appointment.

I think the jurisdiction does require clarification. There was a big fight on when I was there about whether it would be better to have the jurisdiction defined by boards

etc. Generally speaking, ombudsmen like to leave it open. Personally, and I'm not going to be liked by the Ombudsman, I think it should be defined clearly once and for all just what the jurisdiction of the Ombudsman is.

I don't think the Ombudsman should have the power to review decisions of cabinet. Members of the Legislature are elected by the public. They are the prime people who are responsible to the people of the community. They've been elected. From that group of members the cabinet has been chosen. The cabinet makes its decisions. Why should one person who is not elected have the power to review those decisions? I don't think he should. I don't think she should, if it's a woman.

Statutory powers of decision: In my view, no, they have other procedures to take, although I leave it open and I would want to give some more consideration to that, because there are some risks in just putting them off. Generally speaking, I don't think the Ombudsman should have jurisdiction over quasi-judicial jurisdictions.

Extending the jurisdiction to municipalities: Right now, I think perhaps there's some merit in it, but under the fiscal restraints the government is in today, I don't think there's any possibility of getting that done. You're talking about taking an office which now runs with, I think, some 120-odd employees to be an office which would be 500 or 600 employees or more if you got into municipalities. You get an unwieldy situation. If the Legislature elects to go that way, I would prefer to see an Ombudsman dealing solely with municipal matters and having two ombudsmen. Again, as a realist, I don't think there's any hope of a government spending the money on municipalities at this time.

We must remember, in my view, gentlemen, the Office of the Ombudsman is a luxury. It's a luxury which we in this province have had the money, the time and the ability to provide to our citizens, an extra above and beyond the normal rights that a citizen has to go to boards, to go to other people, to go to members.

Many people go to the member and the member straightens it out. I had one member when I was Ombudsman who was a long-term member—I shouldn't say one of the better members, because all members are good, but certainly one who I thought was a good member—who never sent anybody to the Ombudsman. He did all his work himself and felt that only if he was unable to do anything for the person would he send him to the Ombudsman, and he had never run into a case he wasn't able to settle himself.

But it's a luxury we supply, and as a result I think the taxpayers have an interest in seeing that the money isn't wasted and that we don't grow too large.

As to an ideal size for an Ombudsman's office for the size of Ontario—and again the present Ombudsman won't like me for saying this, I'm sure—I think beyond 80 people is too large. I think the proper size for a province the size of Ontario is no more than 60 people. When I was active, France covered the whole country with some 40-odd employees. Now, they had some part-time employees around throughout the whole area.



I'm not going to comment on boards of education, because I have some personal views about boards of education which they won't like.

**Mr Cameron Jackson (Burlington South):** They all agree on it, though.

**Mr Morand:** I don't know.

I think a comprehensive survey should be taken over what areas the Ombudsman should have jurisdiction over, and I'm not prepared at this time to say this or that. I'd have to look into it far more seriously than I have at the present time. Quite frankly, gentlemen, believe it or not, I'm nearly 75, but I'm still busy every day.

Any other questions?

1440

**Mr George Mammoliti (Yorkview):** I have three or four questions. I'd like to ask them all at once, if you don't mind, sir. Maybe you'll want to jot them down so that you can respond.

The first question, of course, is the jurisdiction. I think you've answered that nicely. I think, actually, you've answered my question around jurisdiction in what you said in terms of changing the jurisdiction. I think I'm pretty happy with what you've expressed.

I'd like to talk a little bit about accountability for a minute. I agree it should be hands off. Of course, constituents feel the same way, that it should be the last resort. But frankly, somebody has to be accountable to somebody. Who should this person be accountable to?

**Mr Morand:** Do you want me to wait?

**Mr Mammoliti:** Yes; then you can answer it.

**Mr Morand:** Carry on.

**Mr Mammoliti:** One of the biggest complaints I've been getting is the turnaround time. How do you feel about the current turnaround time? I'm not sure what the average is, but I know there are a lot of complaints.

**Mr Morand:** Hopefully about—okay, I'll get into that after you get to your the last one.

**Mr Mammoliti:** I'd like to know a little bit about how you feel in terms of the turnaround time that exists now as opposed to when you were there.

The other thing is of course the process within the office, the internal structure of the office. More specifically, sir, I know you had some problems in the office, as everybody does. As a manager, you had to contend with staff problems as well as the public. Did you set up a process to deal with internal staff problems, and was it successful? Would you recommend a particular method or way of dealing with internal staff problems within the Ombudsman's office? More specifically, in terms of morale, how did you deal with the morale problems when they arose? Were they successful?

Those are the questions.

**Mr Morand:** Dealing first with jurisdiction, you've suggested that I partially dealt with that. I think there should be a review, perhaps by this committee, perhaps by your counsel, perhaps by other hearings, as to the jurisdiction because I think the jurisdiction can be changed. I think

it can be tightened up so that there are fewer fights as to whether you have jurisdiction or not.

For instance, when I was Ombudsman I had an arrangement with the Attorney General that he wouldn't agree that I had jurisdiction and I wouldn't agree that I didn't have jurisdiction. We would inquire into complaints about him, and if we found something we couldn't solve, then we would fight jurisdiction afterwards. It worked, so we never did decide whether we had jurisdiction in so far as certain aspects of the Attorney General's department were concerned. We worked around it, in other words.

But I think jurisdiction can be tied down. It would certainly be helpful to me, if I were Ombudsman, to know that yes, I have jurisdiction in that, but no, I don't have jurisdiction in that. I think it would save a lot of time.

To digress slightly, when a complaint came into the office—this is when I was there anyway—that complaint was put in writing. If people couldn't put it in writing themselves, we had a person who helped them put it in writing.

The first question was, is it jurisdictional or not? We had a person whose job it was to say, "Yes, it's jurisdictional," or, "No, it's not jurisdictional." With 98% of the people's cases, we could tell right off the bat whether it was jurisdictional or not.

If it was not jurisdictional, we kept up a book. We would tell the people: "Here is where you go. We have no jurisdiction. You go here." That was over, above and beyond what we were entitled to do, but we felt that in the long run it saved time and was a service to the community.

If there was a question whether it was jurisdictional, it then went to the head of that branch. He was very good. If he couldn't determine whether it was jurisdictional or not, we had several lawyers on staff. It went to them and they decided whether it was jurisdictional or not.

If we alleged we had jurisdiction and the ministry, board, agency or branch of the government said, "No, you don't have jurisdiction," we would see if we could work around the question of jurisdiction. We would only fight about jurisdiction if we had to.

When this group in the office was sorting these things out, many of these complaints could be solved without opening a file and many of them were. It's surprising how many people come to the Ombudsman because they don't understand what happened.

I think one of the biggest weaknesses of the administrators of our system is that they don't explain to people why the result they got was the result they got. An astounding number of people would come in and say, "Why didn't somebody tell me that?" and they'd walk out perfectly happy, so you didn't have to go through a whole long investigation. I felt this group was of vital importance in sorting these out.

That's a bit of an aside on the question of jurisdiction, but I think jurisdiction is very important to the Ombudsman and entailed, in my particular case, two people who did nothing else but work on whether we had jurisdiction or not, with input from the head of that division plus the lawyers, if necessary.



Getting to the question of accountability, I think we're getting into a problem of what "accountability" means. Everybody, of course, must be and is accountable in some way, shape or form. You are accountable to the citizens who elect you. A civil servant is accountable to his boss.

You have, in Ontario, some six employees of the Legislature. I think each and every one of those should be as independent as they possibly can be: the chairman of the elections committee, the auditor—I've forgotten who they all are now; I think the Ombudsman should fit into that category and does, as a matter of fact, fit into that category—and should completely retain his or her independence.

Accountability is to the Legislature. If they're not doing their job properly, the Legislature should take some action. I know the standing committee is representing the Legislature, and this is one of the places where I have some problem—in the standing committee and in the select committee—and I'll get around to that.

My view is that the standing committee is to assist the Ombudsman. When I was there I worked with two speakers—Jack Stokes, who I found was very helpful to me, and Mr Turner. I felt this standing committee could help me by taking cases I was unable to solve, and I reported them to this committee.

This committee would look at them only from this point of view: "Do we think we should go to the Legislature with this complaint of the Ombudsman? There's a legitimate complaint here and the ministry won't do anything about it. Should we go to the Legislature with it and support it in the Legislature?" Not rehear the case; only decide whether you, as members of the standing committee, should take that case to the floor of the Legislature and make a motion that the Ombudsman's recommendation be carried out. That is where I think this committee can assist the Ombudsman.

Accountability, in my view, does not mean somebody reviews their day-to-day operation. You don't review the day-to-day operation of a judge. If he doesn't do his job properly, he can be fired. I think the Ombudsman should have as much independence as a judge has. If the Ombudsman doesn't do his job, he should be fired, but I don't think he should have to defend himself against complaints by people who say, "He didn't agree with me." That's mainly what you're getting: "I had a complaint. I went to the Ombudsman. He didn't agree with me and I want you to find out why he didn't agree with me." I don't think that's accountability, quite frankly.

1450

Turnaround time: It all depends. We had cases we'd do in a matter of days, and I'm sure the present Ombudsman does too. We had cases that took years.

Because of the very layout of the act—again, I've forgotten the number of days—if somebody resists the Ombudsman all the way through, the minimum length of time that case and the final report will get to the Premier is something like between 280 to 300 days, so you're shooting the better part of a year. And when somebody's resisting you, come the last day and they haven't replied to your letter, you get in touch with them, but before you can get something out of them, another two or three weeks have

gone by. If they're fully resisting all the way through, it's going to be a year before you get that case completed.

That's very frustrating to an Ombudsman, but because of our Charter of Rights, because of the fact that the Supreme Court has decided that Ombudsmen must comply with all the rules and regulations of fairness, he has to give the ministry, the board or the agency the time to make the replies.

There's occasionally a case where you walk in, see the Ombudsman and the Ombudsman looks at it quickly and says, "Yes, there's an obvious fault," and calls up the ministry and it's corrected. That does happen. But if a ministry says, as many times happens, "We'll look into that" and the clock starts running, there isn't a darned thing the Ombudsman can do about it.

He or she may be mad, but there are certain powers the Ombudsman has which experience—I wouldn't say this for general purposes, but you can get into more time-wasting by exercising certain powers of subpoena and compelling of witnesses and so forth than it's worth, because then you get somebody fighting it. You use cajolery as an Ombudsman and you use negotiating skills as an Ombudsman to try and see that the citizen gets a fair deal. You use the big stick only as a last resort.

The big stick, in my view, always was this committee. This was a committee I relied on. When I couldn't get anywhere, I would report to this committee. This committee would then either take it to the Legislature or not take it to the Legislature. If they agreed with me and took it to the Legislature, then a motion was made in the Legislature, and there is no department, no ministry, that is going to go against a motion of the Legislature.

Complaints about the office: Okay, you're always going to have employee complaints. When the office was originally started, Mr Maloney attempted to have employees from all political stripes and colours, as broad-based a group as he could by way of employees. They were hired very quickly. In the main, when I took over, I thought it was a surprisingly good group of employees. They were not a happy group of employees when I got there. They were not a happy group of employees when I left there.

I had a rule that my office was open to any employee who wished to come in to see me at any time. I had an office on the second floor. I only asked one thing, that you speak to your superior before you come to me, and if you aren't happy with what you get from your superior, come to see me direct. Some did; some wouldn't.

I know there were unhappy people. You hear these rumblings and you know it. I tried everything under the sun I could do to have a happy workforce under me, and I think in the main they were, but I know there was an underground of people who were unhappy. I was never able to find out why; I honestly couldn't find out why. If there are complaints over there now, I don't know whether it's different now than it was. I've left it. I have no contact with the Ombudsman's office any more. Whether they're the same people who are unhappy today as when I was there or not I don't know.

But I'd always run my own office, a small office—I was a judge—and I wasn't used to having a large group of



employees underneath me. When I got to the Ombudsman's office, I think I had 148 when I first arrived. I cut that down to 111 when I left. I don't know what it is at the present time. I know some of the employees enjoyed themselves immensely; I know others didn't. I don't know the answer. I'll be honest with you.

**Mr David Ramsay (Timiskaming):** Mr Morand, thank you very much for coming before us today. It's been very illuminating for all of us to have somebody with your experience give the benefit of that experience to us. We thank you for that.

I really want to come back to the principles of independence versus accountability, which I think is the crux of the matter, and have a little more discussion on that, because it's what we as a committee are grappling with. I know that all of us in this committee, all of us in the Legislature, understand the importance of the independence of decision-making and respect that principle and will protect it and maybe should enshrine it more so in potentially revised legislation. There's no argument about that.

The question it boils down to is the independence of action for the Ombudsman and how much independence of action there must be, because if there is total independence of action, then there is no accountability. The act sets out some limits in that there's got to be an annual audit and of course the Ombudsman is required to submit an annual report. But following the questions that were just asked, it's a \$9.3-million or \$9.4-million operation today.

As legislators, we are accountable to the people of Ontario for all our agencies, boards and commissions. The Ombudsman is such an agency, and when we start hearing complaints and we don't know if they're true or not, that there's tremendous turnover of staff, this may be resulting in lawsuits, this could cost a lot of money. I believe it's got to be our responsibility, members of the Legislature of Ontario, to ensure that the agency works, to the best of its ability, on behalf of the people of Ontario. How do we ensure that this happens while respecting the independence of decision-making of the Ombudsman?

**Mr Morand:** Let me see if I can help you on that. First of all, the money aspect: The committee that decides what money the Ombudsman gets deals with many other branches of government. It's very experienced, usually the heads of the various parties. I went before—I've forgotten now who; different people at different times, but Elie Martel was on it, Bob Nixon was on it, a number of really experienced people. We went over the budget.

I'm happy to say that every year I was Ombudsman we turned back over \$250,000 at the end of the year that we were able to save. We did cut the number of employees down and we got rid of the backlog. That board is an experienced board, that board reviews their budget and decides whether they're entitled to get that much money, and if it doesn't think they should, it says, "Go back and sharpen your pencil again."

There is a habit in government which I deplore and which, when I was there, I said I wasn't going to be the one. I've heard it said by people who are getting money

from the government, "Spend all you can get and try and get more." That's pervasive through a lot of government agencies, I'll tell you that. There doesn't seem to be an understanding that the taxpayers are paying this money and that the money may be better used in other ways.

In any event, that board, if it's doing its job, will take any of the water out of the budget.

Second, the auditor reviews the expenditures. The auditor, if there are some expenditures that shouldn't have been made, is certainly going to let you know. The dollar-for-value audit is a very good tool that the auditor has, and certainly I think it's one that should be welcomed by any government agency to see whether it's doing its job properly, whether the taxpayer is getting proper return for the money you're spending.

Then they go before the public accounts committee, if I remember correctly. So you've got three bodies already dealing with the Ombudsman's spending of money.

#### 1500

When I was Ombudsman, three or four times the select and standing committee—because it changed while I was there—reported to the Legislature and wanted to have the handling of money, and on no occasion did the Legislature elect to change and give this body the power to scrutinize the expenditures of the office. Members of this committee used to go to the public accounts committee so they could ask me questions on the expenditures in the office. I think that's sufficient. I don't think the Ombudsman should be reporting to committees all the time. I think she has more important work to do. That's accountability moneywise.

Accountability jobwise, I don't think she should be accountable to anybody for that except that she should be fired if she's not doing her job, and I think the Legislature should do that. If there are specific complaints that the Ombudsman is not doing her job, then I think the select committee, or the standing committee as it is, should have the right to investigate whether or not the person is doing her job. Not what they're doing in the sense of what the result is or anything like that, but are they there, for instance, do they show up at the office, are they working, that sort of thing, but not as to the individual cases.

I would change the act to this extent, that the Ombudsman has the right to refuse to investigate any complaint that comes in before her or him, as the case may be, that she or he is there as a court of last resort and she or he reviews the cases that she or he thinks may result in an injustice, not every case that comes in the door. Otherwise, you're going to continue to have a very large Ombudsman's office that is wasting time investigating complaints, and the same complaint over and over again.

You may go back to reinvestigating complaints. This is a matter that has come up before. It came up when I was there.

**Mr Ramsay:** That's okay. That doesn't really concern me too much. I want to maybe start summarizing what you've said. Did you feel it would be the authority of the Legislature of Ontario to basically examine the operations of the office?



**Mr Morand:** I want to walk a very fine line on this, because the closest I can get to it is a judicial office or the auditor's office. The only thing I can see is misfeasance or malfeasance in office; not how they do their job from day to day, but misfeasance or malfeasance in the administration of their duty.

That is the independence I think the Ombudsman should have, not whether day-to-day jobs—everybody makes mistakes, I don't care who you are. It may be that the Ombudsman makes a mistake. Too bad; that's the name of the game. But nobody should have the right to review that mistake the Ombudsman made, because the Ombudsman is a court of last resort. The person has lost when he gets there. It's only if the Ombudsman decides out of the goodness of the Ombudsman's heart, or a sense of justice or fair play, that it will be changed.

**Mr Ramsay:** But I'm not talking about even an error in decision-making which, as a human being, the person is entitled to make from time to time. I'm talking about the total overall management of the operation, which is substantial and funded by the public; that there needs to be a mechanism to oversee that this is well spent.

**Mr Morand:** Well, it's being done now by three different groups as far as expenditure of money is concerned.

**Mr Ramsay:** But you will notice in the special report that the Ombudsman put out that she feels a value-for-money audit at this time would be inappropriate and should be done at the normal audit period. Also, she goes on to say that because of the very special nature of her operation, she questions whether the Provincial Auditor is the correct person to be actually doing this fiscal overseeing.

**Mr Morand:** That's the only person I know of who knows how to do it or has the authority to do it.

**Mr Ramsay:** Same for me.

**Mr Morand:** I see nothing wrong with that type of audit. As a matter of fact, if I were Ombudsman I would look forward to having it done, because if I'm not giving the citizens value for the dollar they're giving me to spend, then I want to know it.

I know it's a very difficult thing to get across and I still don't think I've got it across quite yet, but I think the Ombudsman should not be investigated by this committee. On any case that the Ombudsman dealt with, her decision or his decision is final. That's the end. If somebody comes in and says, "I don't like what the Ombudsman did," and she did something wrong—misfeasance, malfeasance—fine, then that's fair game for this committee. "We don't like what she did. We think she gave the wrong decision." I don't think this committee should see it. "Unfortunate; too bad."

**Mr Jackson:** Your Honour, you've been extremely direct with your responses and have covered a lot of the areas that are of great interest to this committee, and I want to thank you. But I want to probe deeper and in more detail the concept of the accountability of the chief officer, the Ombudsman. When I look at organizations that act above the law in its positive context—police, judges and the Ombudsman, quite frankly, in that context—each has within it a mechanism to review decisions.

**Mr Morand:** Appeal.

**Mr Jackson:** No, they have an opportunity to review a judge's questionable decision. That can be an internal review or, based on the conduct of the judge, it can be done through the Supreme Court. But also it can be done internally on the conduct of the judge and enacted by the Attorney General's office.

What I'm trying to probe further is this notion that if there are concerns about patterns of case decisions that in some instances do result in financial compensation—they're rare but they do occur—this would be of concern, and that somehow, some organization representing the taxpayers, and we can only believe it's us, should be responsible for initiating that.

What I want to ask you specifically is, on what basis should we be initiating a review of decisions, if you agree that where patterns are emerging, where the Ombudsman's office is causing decisions that carry similar weight to a Supreme Court decision, where it becomes extremely expensive and starts changing substantive protocols in this province, the office can act with incredible impact on society?

Having said that, somehow there has to be some method by which we don't just say, "We're really not supposed to be reviewing their judgements; they are independent," but in fact we are responsible. We could decide that, as you put it, it is a luxury, a privilege for a society that through its evolution can afford an Ombudsman's office. We may decide that with two million people in this province unemployed, we can't afford it and it has to go.

**Mr Morand:** Quite possible.

**Mr Jackson:** I want to probe further at what point and on what basis one initiates an examination of decisions. I'm going to come into the issue of the management of an office in a moment, but there are two separate areas here you've explored for us.

**Mr Morand:** First of all, a complaint goes to the Ombudsman. The Ombudsman says to himself or herself: "Legitimate complaint. Recommendation." They make a recommendation. The recommendation is sent out. My memory is—it's 10 years ago, but I think that's in subsection 19(3). The ministry then has a choice to say: "That's interesting. We don't agree with you. Goodbye."

What choice has the Ombudsman got there? Nothing except to report to you. He reports to you and says: "I tried to exceed this. I think they did a bad job. I think they should have given this person more money." You say: "That's interesting. Thank you very much. Goodbye," and that's the end of it. Nothing happens. The Ombudsman hasn't got any power. He's only got the power of persuasion, so he's not spending a nickel.

He may recommend that he spend a nickel, but unless you, the select committee—in my view, before the money should be spent, unless the ministry agrees with him, it should come to the select committee. The select committee should say, "Yes, we agree with you," or, "No, we don't agree with you." If you don't agree with him, end of it. File it. It's gone. The Ombudsman gave his view, but you gave your view and nothing happens. Or you say: "Yes, we



agree. This fellow did get badly done to and there should be some money paid," and you, the committee, makes the resolution in the House that something be done about this case.

To me, that's complete control over the office. If you don't like what he recommends, nothing happens. I read somewhere in this material too about carrying over. I instituted, when I was Ombudsman, a carryover from year to year of things that had been recommended which weren't done. I had a three-year limit. I used to remove them at the end of three years. If at that time nothing had happened, I felt: "Okay, they're not going to do it. The select committee hasn't elected to force it in the Legislature, so end of it," and I would take it out of my report.

1510

I gather, from what I've read, that the present Ombudsman doesn't feel it's necessary to carry that on. That's her decision, as far as I'm concerned. Does that answer your complaint?

**Mr Jackson:** Yes, thank you. In regard to the other aspect of the Ombudsman's responsibility, which is the management of the office and to ensure that—I guess the only word that comes to mind is the "performance" of the Ombudsman, in his or her daily activities, is sufficient to suit the importance of the office and the requirements of the legislation, and if that were the case, on what basis? I mean, you've said we have the right to investigate, that she should be fired if she's not doing her job, to roughly quote you, not in context.

Every citizen in this province has the right to be approached on the subject where there's just cause, and that would include the Ombudsman. On what basis could a legislative committee go in and examine—do you understand my concern now?

**Mr Morand:** From a judicial point of view?

**Mr Jackson:** Yes.

**Mr Morand:** When I was on the bench, we did have judges who got a little too old for the job, and it posed a real problem. We used to try and slot those judges into jobs that didn't involve a great deal of finesse, shall we say. But it still happened.

Because the independence of the judiciary is such an important necessity for the proper running of society, we looked long and far for a system that would allow us to deal with this situation fairly and equitably, and lo and behold we found that California had a very good system.

What happened is that we brought in a system whereby a person who was on the bench for 10 years and was 70 years of age, or 15 years and 65 years of age, could go what we called "supernumerary," and we urged everybody to go supernumerary. If you went supernumerary, you had certain attributes. You got your full salary but you were only required to work two thirds of the year. When called upon by the Chief Justice—

**The Chair:** Excuse me for one second, please. Could you please speak into the microphone.

**Mr Morand:** Oh, I'm sorry; I'll get a little closer.

What it meant was that the encouragement was to go supernumerary because you got full salary and only had to

work two thirds of the time. If you went on pension, your pension was two thirds of your salary and you didn't have to work at all. We developed a pattern so that everybody, when they reached that period of time, went supernumerary. If the person wasn't able to do the job properly, somehow or other the Chief Justice never got around to calling him or her and consequently the person didn't work. It would cost the taxpayers a little extra money, but at least we preserved the independence of the judiciary. That was partial compliance with taking care of the problem.

Then we formed a judicial council. The judicial council sits in Ottawa. The Chief Justice of Canada and other chief justices of the various provinces sit on it. If for some reason there are complaints about the judge, this committee sits in camera and decides whether or not this person should remain a judge. In cases—these are all public cases, so I don't hesitate to mention them—certain judges become alcoholics, that's possible.

A very good judge out west, an exceptionally good judge, became alcoholic. The third time he was caught drunk driving, the judicial council decided that was it, and he elected to resign because the alternative is that the judicial council presents to the federal Parliament a recommendation that this judge be fired. Of course, if they're fired for cause, it affects their pensions. I don't think yet that they've had to actually go to a firing.

But what do you do if you have a situation? I think the Legislature should deal with that and I think that a standing committee, as this is, would have a right to inquire into that type of action. I recommend that it be done in camera, because of the importance of the office of the Ombudsman, and if you agree and if such a situation exists, that it then be dealt with by the Legislature itself.

I have no idea what you're referring to, quite frankly; I've heard nothing, so I don't know of anything in the operation of the Ombudsman's office myself that would bring about such an investigation, but if this committee feels there is something, then to me it would be appropriate for this committee to inquire in camera and decide whether there's any merit to the complaint or not.

**Mr Jackson:** When you were the Ombudsman, when you had employees who felt that they were mistreated or harmed, done wrong by while in the employ of the Ombudsman's office, assuming they'd gone through the appropriate channels of either litigation or a grievance and exhausted all appeals, where would a citizen of Ontario employed in the Ombudsman's office go?

**Mr Morand:** I was the final arbiter.

**Mr Jackson:** No, you were the cause. In my scenario, when you were the Ombudsman, I'm suggesting that you were the instigator. Where do individuals now go as their court of final appeal if in fact their complaint is about the person of the Ombudsman?

**Mr Morand:** To the Legislature. When the office was set up, it was considered of such importance that the Ombudsman be independent that the employees of the Ombudsman could not belong to the public service union or organization. As far as I know, to this day that still prevails.



When I was there, we entered into an agreement with the Civil Service Commission to attempt to give our employees as much protection as the civil servants had. If they left our office, they would have priority in hiring by the civil service, and we would give priority to people who were let out of the civil service if we were doing hiring.

But it was felt that it would be inappropriate for people who were members of the same union to be investigating the actions of their brother members of the Public Service Alliance of Canada. It was specifically decided that they would not be entitled. To the best of my ability, when I was there, I saw that all of the privileges, their pension rights and everything they had, were exactly the same as the civil service.

**Mr Ramsay:** Bill 40 doesn't apply to the Ombudsman's office.

**Mr Morand:** Pardon?

**Mr Ramsay:** There's some current legislation before the House, I was just saying. Whether it's going to the Ombudsman's office, I don't know.

**Mr Jackson:** He's referring to Bill 40. I was in Windsor yesterday, and in a retail store, for example, regarding the people responsible for protecting the owner catching employees who are stealing from him, the government has a proposal that says that these people investigating their fellow union members can be in the same union. The law currently says they should be separate. That was Mr Ramsay's reference. Although we agree with your judicial opinion, the government at the moment does not, but you'll forgive that sidebar comment.

**Mr Morand:** Absolutely. I'm here to be of whatever assistance I can. I don't expect that you're all going to agree with everything that I recommend to you.

**Mr Jackson:** You've been extremely candid and forthcoming, and I want to say thank you very much.

1520

**Mr Jim Wilson (Simcoe West):** Your Honour, I too want to thank you for taking the time to appear before us this afternoon. I'm going to keep my comments and questions short because you have been in the hot seat, as it were, for about an hour and a half.

I guess one thing I really haven't made my mind up on, and I'd appreciate really your opinion on it, is whether or not we're encouraging people to rely too much on the Ombudsman, or to contact the Ombudsman's office—perhaps that is a better way of phrasing it—more frequently without having exhausted other avenues. It bothers me to some extent when I drive down University Avenue and see a big banner encouraging the citizens of Ontario and when I see newspaper media advertising encouraging people to phone the Ombudsman's office.

On one hand, I can see the current Ombudsman's point is that obviously people have to know the office exists and have to know they have the right to contact that office, but on the other hand—I mentioned this to the current Ombudsman, and as I say, I really haven't made my mind up on it—it does bother me to some extent that maybe my constituents are being encouraged to contact that office

directly without—you did say in your remarks, and I appreciate it, that an MPP's office is an ombudsman's office and that people should be encouraged to do that. I'm just wondering what your comment is on the role of the MPP's office and the Ombudsman's office.

**Mr Morand:** Let me deal first with advertising. When I was the Ombudsman, the select committee, I think it was at that time, before it became a standing committee, was angry at me that I didn't advertise enough, so I put on a \$30,000 advertising campaign. You can see that the position's changed. I must admit I very seldom come downtown now, so I didn't see any billboards.

Certainly, in my view and as I see the operation of government, I think each member is an ombudsman in his own right and I think his constituency office certainly should be utilized by the citizens. That's why the taxpayers are paying for that office, so that it should be utilized and so that the member—I have no hesitation: Mr Martel was the man I was talking about earlier. Elie never referred anything to the Ombudsman's office. He did it himself. I know when I was there, a great many of the members I was dealing with did everything they could themselves, and only when they came to the end and could do no more, then they referred it to the Office of the Ombudsman.

Indeed, in England I think it is, and probably it's still the same, you couldn't go to the Ombudsman unless you were referred by a member. You had to be referred by a member; otherwise, the Ombudsman couldn't act for you.

**Mr Jim Wilson:** I think, to be fair to the Ombudsman, currently they do try and encourage people when they call to ensure that they contacted the MPP, when I think about it.

**Mr Morand:** There's also a feeling in the world, bigger and better. I don't agree with bigger and better. I don't agree that the more complaints you get, the better the office is doing. That seemed to be a trend that—well, the select committee I was dealing with was very worried that the number of complaints I got might go down. That's why they thought I should advertise more.

My view is that the number of complaints should go down, because surely to goodness when we catch up on the backlog of complaints, we can't be generating more complaints every day about the work of the different boards and agencies.

I attribute the growth in complaints, quite frankly, to the fact that there has grown in the province of Ontario a belief that there is an unlimited right of appeal and that at every level of appeal you have a chance, whether it only be 3% or 5%, of changing the previous appeal's decision, so get as many appeals as you can and you've got a chance you might get a change.

I know that when I was on the bench—again digressing, I suppose, but I'll do it briefly—if you went to an examination for discovery, which is prior to a trial, you could ask a question and the other lawyer could say, "Don't answer that." This was preparing for a trial. You could appeal that to a local master. The master could say whether or not that question should be answered. If you didn't like what the master said, you could go to a single



judge who would say, "Yes, you have to answer that," or, "No, you don't have to answer that."

Then, if you didn't like that, you could go to the Court of Appeal and it would answer yes or no. Then, if you didn't like that, you could apply for leave to the Supreme Court of Canada. Now this has been changed from my day. Then eventually maybe even go to the Supreme Court of Canada. Probably, whether the question was answered or not didn't have any effect on the case whatsoever, but it was one way of stalling the process.

I very early developed the view that everybody should have at least one appeal from any decision, but anything beyond one appeal is a luxury and that depends whether the taxpayers can afford that luxury.

**Mr Jim Wilson:** During your five years in the Office of the Ombudsman, as Ontario's Ombudsman, did you ever have a situation where the then select committee wanted to review decisions you might have made?

**Mr Morand:** I wanted them to review them, quite frankly. I did have them speak to me about letters that they got complaining, but we dealt with those very informally. One year I was going on a vacation so I took along a briefcase full of decisions to do on my vacation, and I read them and signed a bunch of them while I was away and the fellow complained that I gave my decision while I was out of the country and therefore he should have a rehearing.

**Mr Jim Wilson:** You just can't win sometimes.

**Mr Morand:** I think it's important that the Ombudsman not have to come before some body and justify her decisions. I think the important point on that, and I'll repeat it again, is that this is a luxury, because it's an appeal beyond an appeal; in other words, a person who is making the complaint has lost, he's finished, he's dead. Now they get one special last crack at this one person who maybe will decide they got badly done to. But where does the appeal process end? In other words, it's got to end somewhere. I think it should end with the Ombudsman.

**Mr Paul R. Johnson (Prince Edward-Lennox-South Hastings):** Your Honour, Mr Morand, it is certainly a pleasure to have you here today. I must say that I'm a new member of this committee and many of your comments and answers have been very enlightening, and I think very valuable to me especially.

I had a great list of questions, most of which you've already answered, but I do have one small question that I would just like to pose to you. You mentioned that a value-for-money audit should be welcomed by the Ombudsman. Is there any reason you might know of why the Ombudsman would not choose to have that value-for-money audit placed upon—

**Mr Morand:** That would be asking me to guess. I don't know.

**Mr Johnson:** Well, in your own experiences, is there any reason why?

**Mr Morand:** Reading the little bit of material that I've read, I came to the conclusion that right now this committee and the Ombudsman aren't getting along very well together. I gather, from what I've read, that the Om-

budsman feels that you're attempting to interfere in her field and that you have no right to be there. I understand from reading this material that she doesn't intend to appear before this committee. It may well be that she's feeling the question of independence is so vital to her, and I think it is vital, that she is not going to cooperate with the committee at this time.

Certainly, and I don't mean to be offensive, on some of the recommendations of this committee made in the 19th report, I would have said, "Not with me you don't, gentlemen." Quite frankly, I would have taken the same attitude, "My independence is of such importance that I'm not even going to talk about this with you."

On the other hand, you are now holding a hearing which has nothing to do, in a sense, with the 19th report. It has to do with a motion before the Legislature in which you are authorized to make a review, so that's a whole new ball game as far as I'm concerned. Does that help?

**Mr Johnson:** That's great; thanks very much.

1530

**Ms Christel Haeck (St Catharines-Brock):** I echo the comments of my colleagues and appreciate the fact that you've taken some time out of your busy day to join us and enlighten us as to what it means to be the Ombudsman and your opinions on that office in total.

I'm going to follow up on some comments Mr Ramsay started off with. Specifically, in the last couple of years, we've obviously been hearing different things either from complainants who have a concern about their case—we don't get involved in the decision, as you rightly point out. We may make some comment that there seems to be a delay which the person has indicated to us and make some inquiries about that. For the most part, we haven't got a lot of information back, even, say, from the point of view of the complainant. They have said, "I will give you all information." That's not a problem for me, but I'd like you to at least look at the issue, say, of the time factor of coming to some solution or resolution of this problem, on either side of the fence.

In that process, we've also heard from some employees who've had some concerns.

You've raised the issue that if an Ombudsperson, male or female, is possibly not doing the job, he or she should be relieved of that office. What would be the guideposts for making some of these decisions? You have the complainants who bring issues before you. You have past employees and current employees who bring issues before you. We don't get involved in the office in any way, shape or form, so we have information systems, some of which we tend to ignore, but as the volume increases, we also have to ask ourselves, at what point do we say, "We really have to look at what this Ombudsperson is doing"? From your experience in looking at Ombudsman offices throughout the world, what would be the guideposts we as a committee should follow?

**Mr Morand:** I don't know of an Ombudsman who has been replaced anywhere in the world. The attempt worldwide is to appoint people whose integrity is beyond reproach. In many countries—I don't know now, but half a



dozen at least when I was there—the Ombudsman was a Supreme Court judge on leave of absence. I retired from the bench when I took the job, because our judicial committee felt that a judge should either be a judge or retire. I made a deal in so far as my pension was concerned—it wasn't a very good deal, I might say; it cost me a lot of money—and I retired so that I could do the job.

I think firing is capital punishment. I hesitate even to talk about this, but the question of the misfeasance or malfeasance requiring such a move, in my mind, has to be pretty bad.

To my mind, it can't be simply that some of the employees don't like what their boss is doing or how the boss is handling them or something of that nature. You always have disgruntled employees. I would say that when I was Ombudsman, 90% of my employees were what I call good, valued employees; 10% of them, if I'd found a good reason, I'd have fired them, but nowadays to fire somebody you've got to have such a good reason that I wasn't able to find sufficient reason.

You're always going to have disgruntled employees, and that holds true every place. I've been around for 75 years now. You're always going to have disgruntled employees. You're always going to have disgruntled people. This is not a perfect world and everybody doesn't get perfect justice. We do our best, but, digressing again, what can the taxpayer afford?

We're trying to give every citizen—and this is my own view, and I shouldn't even get into this—perfect health care. The cost is getting pretty heavy for perfect health care, as you people know better than anybody else. We're trying to give everybody perfect justice. I think we do better than anywhere else in the world, but what can we afford?

I have no idea what the committee is talking about. I am concerned that the talk has gone to this stage, because I think it can destroy the effectiveness of the Ombudsman. Even in the conversation that we've had here today, which I presume is public and so forth, we may be doing a very grave disservice to the Ombudsman. I don't know, because I don't know what you're talking about of course.

**Ms Haeck:** It falls into the whole question of accountability. For those of us who are basically uninitiated into the mysteries of that office, again for most of us, we'd look at it from some distance, and we have no way of judging adequately if it is or it is not doing the job.

Obviously, we hear in our offices from constituents, not necessarily about this office but the whole range of government services, about the good and the bad. Usually, if someone is coming to our offices, nine times out of 10 it's something bad as opposed to something good. In our position of looking at a review, how do we make these judgements? It's not sort of reading the entrails of a chicken.

**Mr Morand:** It's very difficult. When I was there, I had a meeting once a week, and every case that we were going to make a decision on came before the committee that we had, which complained that I was wasting too many man-hours having this meeting. The investigator had

to come before this group, which included five department heads, myself and my assistant. About 12 of us sat around, and they had to come and justify the fact that they found something that needed correction.

Your employees come from all spectrums, and they have different social outlooks on life. Some people's attitude is: "Why didn't they take care of themselves? What the hell are they doing here?" To put it bluntly, "If they can't take care of themselves, what are we doing wasting our time?" All the way security from the cradle to the grave; society owes everybody two cars in the garage and so forth.

You have employees who fit into that whole category, and the Ombudsman is sitting there making decisions, trying to render justice, and people there may not agree with her brand of justice. But the Ombudsman is the Ombudsman. I don't know whether that's the basis for the complaints. I'm just saying it's a possible basis for the complaints.

Promotions are a possible basis for complaints. Always when you give a promotion to somebody, there's somebody else who feels he should have had that promotion. Raises in pay is another. I introduced, in my mind, a semi-merit pay, which didn't go down very well.

**Mr Mammoliti:** Semi-merit what?

**Mr Morand:** Semi-merit pay. I didn't call it that, but people who were good employees and did more work got more money than the others, and that didn't go down very well. There were people who weren't very happy about that.

To give you an example, I had one employee who was working in the workers' compensation branch who did one case a month; that was her average, year in and year out. I had another girl working in the office who averaged 16 a month. The average office-wide was nine cases a month. Eventually, this one case a month, I guess she felt we were putting too much pressure on her, she resigned and complained vociferously that I wasn't administering justice, that I was forcing her to go fast and not to give a thorough investigation and so on and so forth. That was her view, but on the other hand, I didn't think the taxpayer was getting value from that employee who was only doing one case a month, year in and year out, and was generally getting the easy cases because she was so slow.

1540

She was a very disgruntled employee. I don't know what the situation is, but you're always going to have disgruntled employees. I was surprised, because I had had a small law office; I had never had a big office. When I came on, I had to learn a whole new *modus operandi* in how to run an office with 130 employees in it. It's not easy. I don't know whether that's any help or not, but—

**Mr Alvin Curling (Scarborough North):** It's a great opportunity for me to just put a very simple question to you, really, and it's about accountability. As a matter of fact, you were the Ombudsman before but in an era which is quite different than now.

**Mr Jackson:** They were great days, though.



**Mr Curling:** I presume they were. The society itself—I'm sure they were great days—but it was rather simple. As a matter of fact, the composition of the society was quite different. Today the complexity is quite as diverse as even around this table today.

The approach to resolutions and to problems is completely different too. The accountability for politicians is different. As a matter of fact, even today, if we talk about areas, if someone has some concerns, they can go to human rights or they can go to the workers' compensation. It all depends on what it is. Now we have a commission of employment equity because the human rights are not doing their job properly, so there we expanded the bureaucracy.

Then we have the courts and we look at all those—they said we were backlogged, and when we have a few—maybe you are saying that some people felt there were not enough cases with the Ombudsman. But funny enough, we have more and we have more backlogs. In the members' offices there are of course many cases where people feel justice is not being done.

We have a responsibility—if we have agencies or whatever definition the Ombudsman comes under—and it's a fact that we have a standing committee and that we have to be accountable also to the Legislature. Don't you feel somehow that, as parliamentarians, we have that responsibility in the sense that there's an Ombudsman and that not only must we report to the Legislature—because I don't think this is as important as the people out there—to say that we are getting value for money and that we can easily and comfortably say to those people who come before us, "Yes, if you have exhausted all those avenues that we have continually taken from you, as taxpayers, to expand these areas so that justice will not only be done but be seen to be done," if an Ombudsman is coming for us and we can't—you said to enhance and improve the effectiveness of the Ombudsman—sure, I think we are here for that. But that individual is also there so that we can have it more effective and maybe give some directions of such.

Don't you feel that the standing committee itself is a very effective way in which we can have direction and that it's important? If that's not the case, do you feel we should disband the standing committee?

**Mr Morand:** I will repeat it again, because I think I've answered that before: No, I think we have to go back to this position that the persons have had their reviews. This Legislature does many things: You pay people to review jails, you pay people to review institutions of all kinds—constant checking, checking. Mental institutions: You've hired, at the taxpayers' expense, patients' advocates. Patients are entitled to free legal aid.

Yet when these people have gone through all the internal processes which are available to just about everybody today and they've been turned down, they were fairly dealt with. The court of last resort is the Ombudsman, and I think the Ombudsman should have the right to say, "You lost, you came to me, and you show me why you've been badly done to."

The person comes and makes an allegation and the Ombudsman has a duty, as I see it, to inquire whether or not that person was badly done to. If she decides no, as far

as I'm concerned that's the end of it, because that client has already exhausted all the recourses open to him. That client could go to you and maybe did go to you. Then the client can go to the Ombudsman as a last resort.

Everybody else has turned it down. The Ombudsman says no. I say that's the end of it, because they've already been turned down. The Ombudsman was just that last net to say, "Let's be doubly sure nobody was badly done to." If then they can come and they can appeal to you, the committee, and then you sit in judgement over the Ombudsman, what's the point of having an Ombudsman?

**Mr Curling:** Your Honour, look at the Police Services Act, for instance. That came about because of persistent individuals who say that they have not been treated well by the police. They've been called all types of names. They've even said, "Who elects them?" and all these things happened. If they had believed in that process and felt the process would really deal with them, and they've gone through most of that—they've been to court and they feel it has not been done properly and they've been to the Ombudsmen and they feel it has not been done properly—they will demonstrate. Sometimes they get in conflict with the court and then come the police and what have you.

Therefore, sometimes the system is so rigid itself, and the Ombudsman can be so rigid, the courts can be so rigid, and it seems the only avenue is elected individuals because we will then speak to those individuals, and if they don't respond, we will change them.

You saw it with the Liberals and the great popularity they had. People change, and they change government to ask, "Will someone listen?" These are signals, not only because people, they feel, are not listening in a certain sense, but they feel that as the society changes, individuals are, if you'll pardon the expression, so conservative in their thinking that they are not able to listen.

Therefore, if we ourselves are hearing that at this standing committee, and saying to the Ombudsman, "We want to speak to you," and they say, "We refuse because I have the ultimate power," then we feel rather that there is no effectiveness to us. I know you were repeating yourself, but I just wanted to make the point.

**Mr Morand:** You say "conservative" thinking. I happen to be a conservative thinker and I think that's great. There's nothing wrong with being a conservative thinker.

**Mr Curling:** I should say "rigid" thinking.

**Mr Morand:** You were talking about the police complaints board. I spent two years heading a royal commission on the Metropolitan Toronto Police Force and excessive use of force by the Metropolitan Toronto Police Force. I know what you're talking about. I recommended that that board be set up and I worked with Syd Linden, so I know what you're talking about.

But that still gets into another field in that you're dealing with a situation there where you're not a "court of last resort" Ombudsman. You're dealing with a process that needed another level of supervision and you provided that other level of supervision. That's not the Ombudsman's job. The Ombudsman's job is a court of last resort.



**The Chair:** Thank you, Mr Curling. Mr Wilson, you wanted one more question, very briefly?

**Mr Jim Wilson:** Yes, just a quick one, and it's appropriate because I think Mr Curling asked a very good question.

I would agree with you, Your Honour, that you either have faith in the Ombudsman to do her or his job or you don't. I've had the opportunity to observe this committee at a distance because I'm not a permanent member of the committee, and if this committee is just simply going to meddle in the affairs and day-to-day operations of the Ombudsman's office and question the person of the Ombudsman without recommending a firing or perhaps without any real cause other than just grumblings that we hear from constituents and that sort of thing, would we be better off just getting rid of this committee? I mean, maybe we're the ones wasting taxpayers' money, because it seems to me that the Legislature, through this committee, has spent a great deal of time dealing with this issue.

**Mr Morand:** Well, as far as I know, it's the only jurisdiction in the world that has a standing committee or even a select committee dealing with the Ombudsman. It may be that you are superfluous. I found that I could use the committee when I was here. I didn't always agree with the committee, and I had fights with my standing committee too. I felt they wanted to interfere with my jurisdiction.

I could never get across to my standing committee the very item which I've been trying to get across to you today, that independence is of vital importance. Not only is it important but it must be obvious to the public that this person is independent, that this person is the last resort. You ain't got nowhere else to go, to use the vernacular, when you're through. You appoint an Ombudsman and you say, "That is the type of person we're going to be happy with to make the decisions," and if he doesn't make the right decisions, that's too bad; you appointed him.

**Mr Mammoliti:** One quick question again, in terms of internal staff problems. On one hand, you say the Ombudsman is the last resort, and it should be. What I'm saying to myself is this. If a staff person has a problem, and it's a legitimate problem in terms of process or in terms of internal goings-on in the office, and it's something that he can't complain to the Ombudsman about directly, who does he come to? What avenue do they have, other than perhaps the courts, to deal with that? And if they go to the courts, who's to say they should have to hire a lawyer to deal with a problem at work?

**Mr Jim Wilson:** Go to your MPP.

**Mr Mammoliti:** Okay. We get a comment to call the MPP, yet when the MPPs deal with it, you have the Ombudsman saying, "You're out of step, you're putting your nose where it shouldn't belong."

**Mr Morand:** You're not coming to see the Ombudsman in that case as a select committee or a standing committee. You're coming there as an MPP who has a constituent who is complaining. What right and what opportunity does an employee of, say, the Ministry of Labour have if he has a complaint? There's a grievance procedure. I believe there's a grievance procedure in the Ombudsman's office.

**Mr Mammoliti:** That she says is very capable, yet there are staff members who are saying it's ineffective. Where do you go to resolve these things? If it isn't this committee that looks into it—

**Mr Morand:** Where does the employee of the Ministry of Labour go?

**Mr Mammoliti:** Who would look into it? That's all.

**Mr Morand:** Where would the Ministry of Labour employee go? Through the grievance procedure.

**Mr Mammoliti:** They certainly go the political route as well.

**Mr Morand:** That's the same way the employee at the Ombudsman's office should go, the political route.

**Mr Mammoliti:** Then you would agree that politicians would have a hand in it, to a degree?

**Mr Morand:** I would agree that they would have the same hand in it that they would have with any employee who came to them and said, "Hey, I didn't get a fair deal from the office that I work in." I would say that the member should have a right to go over to the Ombudsman's office and say: "I'm not here to talk about what you did. I'm here to talk about this employee." Indeed when I was Ombudsman, I had an open house for all the members of the Legislature. Generally speaking, I got along pretty well with the members.

**Mr Mammoliti:** You're easy to get along with.

**Mr Morand:** There was one member who didn't like me at all because he had a complaint and I said his complaint wasn't justified. He never had a good word to say for me after that. I don't know whether he's still a member of the Legislature or not.

**Mr Mammoliti:** Thank you, Your Honour. I appreciate it.

**The Chair:** Your Honour, I want to thank you for taking the time this afternoon for that thoughtful and insightful presentation. Thank you very much.

**Mr Morand:** Thank you.

**The Chair:** This committee stands adjourned until 10 am tomorrow morning.

The committee adjourned at 1554.











## CONTENTS

Wednesday 19 August 1992

<b>Review of the Office of the Ombudsman</b> . . . . .	B-37
Donald R. Morand . . . . .	B-37

### STANDING COMMITTEE ON THE OMBUDSMAN

- \***Chair / Président:** Morrow, Mark (Wentworth East/-Est ND)
- \***Vice-Chair / Vice-Présidente:** Haeck, Christel (St Catharines-Brock ND)
  - Akande, Zanana L. (St Andrew-St Patrick ND)
  - Drainville, Dennis (Victoria-Haliburton ND)
- \*Duignan, Noel (Halton North/-Nord ND)
  - Henderson, D. James (Etobicoke-Humber L)
- \*Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
  - Miclash, Frank (Kenora L)
  - Murdoch, Bill (Grey PC)
- \*Perruzza, Anthony (Downsview ND)
- \*Ramsay, David (Timiskaming L)
  - Witmer, Elizabeth (Waterloo North/-Nord PC)

#### **Substitutions / Membres remplaçants:**

- \*Callahan, Robert V. (Brampton South/-Sud L) for Mr Henderson
- \*Coppen, Shirley, (Niagara South/-Sud ND) for Mr Perruzza
- \*Jackson, Cameron (Burlington South/-Sud PC) for Mr Murdoch
- \*Mammoliti, George (Yorkview ND) for Mr Drainville
- \*Owens, Stephen (Scarborough Centre ND) for Ms Akande
- \*Wilson, Jim (Simcoe West/-Ouest PC) for Mrs Witmer

#### **\*In attendance / présents:**

**Clerk / Greffier:** Carrozza, Franco

**Staff / Personnel:** Murray, Paul, committee counsel and research officer, Legislative Research Service



ISSN 1180-4300

## Legislative Assembly of Ontario

Second session, 35th Parliament

## Official Report of Debates (Hansard)

Thursday 20 August 1992

### Standing committee on the Ombudsman

Review of the Office  
of the Ombudsman

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Jeudi 20 août 1992

### Comité permanent de l'ombudsman

Examen du Bureau  
de l'ombudsman

Chair: Mark Morrow  
Clerk: Franco Carrozza

Président : Mark Morrow  
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### **Table of Contents**

Table of Contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

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La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Thursday 20 August 1992

The committee met at 1008 in room 151.

### REVIEW OF THE OFFICE OF THE OMBUDSMAN

DELBERT DUPRÉ

**The Chair (Mr Mark Morrow):** I'd like to call this to order. Good morning, everyone. I'm Mark Morrow, Chairman of the standing committee on the Ombudsman. Today we are reviewing the Office of the Ombudsman.

Our first presenter this morning is Delbert Dupré. Good morning, sir. I want to welcome you this morning. You have a half-hour for your presentation. The committee would appreciate if you would leave some time so it can have some questions and comments for you. Begin when you feel comfortable, and when you begin could you please read your name into the record for us. Thank you very much.

**Mr Delbert Dupré:** Thank you, Mr Chairman. My name is Delbert Dupré. I don't know how many questions will be asked, but I'm prepared to answer whatever questions I can of course. I have prepared a rather short initial statement and I'll proceed to read that.

First let me say that I appreciate your acceptance of my request to appear before this committee. My request included some basic information which will have given you an understanding of the background of my concerns. These concerns had caused me to make a request for an Ombudsman investigation which was filed under date of February 20, 1991. It was acknowledged under date of March 14, 1991, under file 82109.

I had asked for an investigation into the role played by the Ontario Securities Commission in authorizing the amalgamation of two companies in 1987 which had resulted in serious losses to preferred share owners in one company and corresponding substantial financial gains to the other company. Those gains were augmented by substantial income tax credits to the second company, which had been contingent on completion of the amalgamation.

At the time of filing, I acquainted the Ombudsman with the mandate of the Ontario Securities Commission, as published in its brochure, *An Introduction to Investing in Securities*, under the heading, "What is the Ontario Securities Commission?" It reads as follows:

"Its mandate, as part of the Ontario Ministry of Financial Institutions, is to ensure that the financial community operates with efficiency and integrity and that the interests of Ontario's investors are protected."

I questioned the Ombudsman as to whether the OSC had acted in accordance with that mandate. If not, I believe that the victimized shareholders should be able to obtain restitution from the company which had benefited.

More than 16 months have elapsed since filing, and the latest communication from Ombudsman investigator Blackwood, under date of July 29, 1992, states, "I should

be able to provide you with a summary of the investigation shortly."

My concern is not only about the length of the turnaround time being taken, but a fear that the Ombudsman staff is insufficient in numbers or expertise to cope with a situation where the beneficiary of that amalgamation is benefiting from the expertise of a legal firm which has close to 100 lawyer members.

**The Chair:** Thank you very much, sir. Any comments or questions? Mr Mammoliti, please.

**Mr George Mammoliti (Yorkview):** Welcome, Mr Dupré. Good morning. Thank you very much for taking the time to come out. The first question that I'd like to ask is pretty straightforward, and that is perhaps to tell us about any of the problems that existed with the Ombudsman's office when you dealt with them, and to what extent.

**Mr Dupré:** No. Everyone has been sincere and anxious to be helpful. No problems whatever. I have enjoyed—

**Mr Mammoliti:** Okay.

**Mr Dupré:** My only concern is that I would have liked to have a little better service.

**Mr Mammoliti:** Okay. How long ago was this?

**Mr Dupré:** I filed my complaint on February 20 of last year.

**Mr Mammoliti:** February 20 of last year. When you mean "better service," can you be more specific?

**Mr Dupré:** I would like to have had my problem addressed and answered—

**Mr Mammoliti:** A little quicker perhaps?

**Mr Dupré:** —a little quicker, right.

**Mr Mammoliti:** What, in your opinion, would be sufficient, then, if it's a little quicker, in terms of turnaround time? I know it's a little unfair because of your particular problem, but what would you say would be fair in terms of a turnaround time a little quicker?

**Mr Dupré:** Really I have no preconceived idea. I know this is an extremely involved situation, but I would have appreciated being contacted perhaps every month or so to be advised of what was happening. But there was a great hiatus of time before I—

**Mr Mammoliti:** So it would be safe perhaps to say you may want a little bit more communication in terms of an update on your case and that sort of thing.

**Mr Dupré:** Yes. I did hear from them from time to time, and on one occasion they sent me 130 pages of documents to analyse and I did my best for them. I got it back to them in a week or 10 days, but then there was quite a time gap before there was any further word.

**The Chair:** Thank you very much, Mr Mammoliti. Mr Ramsay, please.



**Mr David Ramsay (Timiskaming):** Good morning, Mr Dupré. Thank you very much for coming before us this morning. As you know, we're taking a look at the legislation that establishes the Office of the Ombudsman to see if there are any changes needed to bring it into the 1990s.

**Mr Dupré:** Right.

**Mr Ramsay:** We appreciate your input. Your last comments I took as being a question that you weren't really aware why there was a delay and you weren't sure whether it was a lack of staffing or a lack of expertise of the staff.

**Mr Dupré:** Right.

**Mr Ramsay:** I don't know that either right now, but they are two interesting questions to ask, for sure, and I'm glad you've posed them. Have you received any explanation—I presume you probably have asked—why it's taken so much time since your first request? Have you received an explanation as to why it has taken 16 months so far and you still don't have a summary of the case to date?

**Mr Dupré:** Not really, no.

**Mr Ramsay:** Have you asked that questions?

**Mr Dupré:** No, I haven't asked why there's a delay. I knew it was a complicated situation and I felt it was probably necessary to do a lot of research work, and perhaps there hasn't been a day wasted. I don't know. But I would have felt better if I'd been kept informed as to what kind of a timetable there might be.

**Mr Ramsay:** So what you would like then, regardless of the amount of time that it might take to give you satisfaction that there's been a full investigation, is to be informed as to an approximate schedule of when you might expect some answers, whatever they may be, from the investigation.

**Mr Dupré:** That's it. Exactly.

**Mr Monte Kwinter (Wilson Heights):** Mr Dupré, I was interested to hear your case. I'm not familiar with it. As a former Minister of Financial Institutions, I had a similar situation with the Astra/Re-Mor investors where they went to the Ombudsman and, after a very lengthy investigation, the Ombudsman made a declaration in favour of the investors.

What I really want to get to, and I felt strongly about it at the time and I still feel that way, is that you sort of gave the preamble as to the mandate of the Ontario Securities Commission and you stated what its role was. You felt that they hadn't honoured that responsibility and, as a result, you've gone to the Ombudsman.

**Mr Dupré:** Right.

**Mr Kwinter:** I'm just curious, and I'm trying to sort of deal with the process, whether or not that is the proper venue for this kind of complaint and whether it should have been a judicial review. You stated that you felt they didn't have the staff or the expertise to deal with this particular situation.

**Mr Dupré:** I brought that up as a possible reason for taking a considerable amount of time.

**Mr Kwinter:** Oh, I see. I don't want to get involved in the case; I'm just trying to find the process. When the

securities commission made a ruling, it made a ruling on the basis of information it had.

**Mr Dupré:** Yes.

**Mr Kwinter:** They have a commission which is made up of people who are knowledgeable in the industry and they either approve or disapprove particular initiatives of various investors or companies offering investments. They made that decision and you disagree with that decision.

**Mr Dupré:** Excuse me, I don't follow what you're saying.

**Mr Kwinter:** What I'm saying is that the Ontario Securities Commission agreed that these two companies could merge. As I say, I'm not familiar with the details of the particular case.

**Mr Dupré:** Yes, they approved the merger.

**Mr Kwinter:** They approved the merger, and they did that on the basis of their best information. You, as an investor, were not happy with their approval and you've gone to the Ombudsman.

**Mr Dupré:** Right.

**Mr Kwinter:** The question I'm asking is whether that is the role of the Ombudsman when you have a body such as the Ontario Securities Commission whose responsibility is to oversee the investment community. They are made up of people who are supposedly knowledgeable and they make that decision. You are going to the Ombudsman, who then has to say to them: "Did you make the right decision?" as opposed to the process. The question I have is, are you objecting to the decision or are you objecting to the process?

1020

**Mr Dupré:** When you get involved in the process, I don't know just what I should be looking for, but if you have to say one or the other, I would say I faulted their decision. Because of the fact that the Ombudsman shows the Ontario Securities Commission as being one of the government organizations that it has some jurisdiction over, I felt it was appropriate to take it to the Ombudsman. The Ombudsman has accepted the responsibility, but they're taking a long while to perform.

**Mr Kwinter:** The reason for my question is to get to the heart of the role of the Ombudsman. It would seem to me that if you're having difficulty accessing the Ontario Securities Commission, or if you couldn't get a hearing, couldn't present your concerns to it, I would see that as the role of the Ombudsman. I have a problem, when they make a decision which they are empowered by legislation to make, in asking the Ombudsman to question that decision as opposed to a judicial review where a judge can look at both parties, look at the issue and make a decision. I'm just wondering whether we are putting an onus on the Ombudsman to make a decision, as you have suggested, they are not equipped to make or probably shouldn't make. I'm just curious to know what your reaction is.

**Mr Dupré:** I don't know anything about this judicial review. What is a judicial review? How do you get a judicial review?



**Mr Kwinter:** You go to court. You, as a shareholder in a company that you feel has disadvantaged you, go to court. You ask a judge to determine that.

**Mr Dupré:** Yes, but is this practical for a man who has 1,000 shares in a big company and doesn't have much money to spend on court costs? I kept in touch with my MPP throughout the problem and he recommended that the Ombudsman was the appropriate venue to approach the problem through, so I have done so. I think I've exhausted all the alternative—I forget just how it's worded—

**Mr Mammoliti:** On a point of information or clarification, Mr Chair: Who would the gentleman's MPP be?

**Mr Cameron Jackson (Burlington South):** Of what importance is that?

**Mr Mammoliti:** I'd like to know, that's all. Is there anything wrong with that?

**Mr Jackson:** You're interrupting the gentleman. It would be more polite if you waited, if it's that serious a question.

**The Chair:** Mr Mammoliti, can I ask that you wait and possibly ask that question—

**Mr Mammoliti:** Okay, no problem.

**Mr Dupré:** To sum it up, I kept my MPP informed throughout and he suggested that the proper approach to get a solution to the problem was the Ombudsman.

**Mr Paul R. Johnson (Prince Edward-Lennox-South Hastings):** Thank you for coming before the committee, Mr Dupré. Certainly one of your concerns is timeliness, or lack of timeliness I guess, in the response from the Ombudsman with regard to your concern. If, as the Ombudsman's office felt it wasn't within its capacity to deal with this particular problem in a timely manner, it had at least responded to you and given you appropriate direction as to how you could resolve your concern, would that have been—I'm surmising here—an alternative that would have been more acceptable?

**Mr Dupré:** No, I'm happy with the Ombudsman. I have great confidence in the Office of the Ombudsman, something I think the government of Ontario needs. As I mentioned earlier, I have been pleased with the reception I've gotten and the cooperation I've had and the attitude of the people, but it's just that it's taking so long. It seems to me that in 16 months more progress should have been made.

**Mr Johnson:** I understand your concerns. I'm sure people come before the Ombudsman with concerns that can be handled in other venues and I thought, and indeed Mr Kwinter has suggested, that possibly a judicial inquiry into your concerns with the Ontario Securities Commission may have been the right avenue to take. I wondered if, had the Ombudsman made you aware of this earlier, it may have expedited a resolution of your concerns.

**Mr Dupré:** I had quite a bit of communication with the Ontario Securities Commission, but this happened five years ago and there was quite a turnover in personnel, as you may recall, and it wasn't satisfactory. So, as I say, I kept in touch with my MPP. You probably know him, Dr Jim Henderson. I don't know whether he still is a member

of this committee, but he has been on this committee. He felt it was an appropriate problem to take to the Ombudsman.

**Mr Johnson:** I would like to add that yesterday the Honourable Judge Morand was here and he suggested that indeed MPPs are, within their capacity, to a certain extent ombudsmen themselves; where they can't find a resolution to particular concerns, they direct their constituents to the appropriate body.

**Mr Dupré:** That's the procedure I went through. I'm happy with it, outside of the time factor. But I'm bringing up that if they had sufficient personnel and sufficient expertise—as I mentioned, the company that benefited from this amalgamation, in my opinion at the expense of shareholders in part, has a very large legal staff. Presumably they know all the loopholes and approaches to accomplish their ends. Presumably too if the Ombudsman is going to be able to handle these Ontario Securities Commission problems, he needs to have a knowledgeable staff.

**Ms Christel Haeck (St Catharines-Brock):** Mr Dupré, thank you very much for coming before us. Basically, as someone who has gone to the Ombudsman's office, you are entitled to have a look at your file and ask questions about the investigation and about how things are proceeding. Have you availed yourself of that possibility?

**Mr Dupré:** Perhaps not as much as I could have or should have, but I have been in touch with them occasionally; I can't give dates. Perhaps I could have expedited things if I'd kept after them. But I'll tell you, I spent my working life in the business world—I'm 81 years old—and I don't necessarily believe that the squeaky wheel gets the grease; I believe that if you become a nuisance to people, they don't work as hard for you as they do if you let them handle it in their own fashion.

**Ms Haeck:** I don't in any way disagree with what you're saying as far as being on the phone every day or something of that sort. But by the same token, people are entitled to have some information about what is going on. If you have these concerns, you really should avail yourself of that process as well.

**Mr Dupré:** That's a good point. Perhaps I should have established a rapport that enabled me to call every month and ask what's happening. Maybe I should have.

**The Chair:** Any further comments or questions? Seeing none, Mr Dupré, I want to thank you very much for appearing before this committee this morning.

**Mr Dupré:** Thank you. It's been a pleasure indeed.

1030

GRAHAM WHITE

**The Chair:** The next presenter is Professor Graham White. Good morning and welcome. You have some time to do your presentation. I would appreciate it if the members could comment or ask questions when you're done. Begin when you feel comfortable, and could you please read your name into the record.

**Dr Graham White:** My name is Graham White; I'm a professor of political science at the University of Toronto. Lest, however, there be any false apprehensions



about why I'm here, I'm not an academic specialist in ombudspeople. I spent four years as clerk of the predecessor of this committee and followed the actions of the Ombudsman and this committee prior to that and subsequent to that. I must say I haven't kept up nearly as well as I used to since I left the employ of the Legislature, but the principles I came to believe in about how the Ombudsman should work and how this committee should work have not changed. I also have read this committee's most recent report and the Ombudsman's special report—both, I add, with some distress.

What I propose to do is outline what I think should be the principles underlying the whole exercise and then offer the committee some specific suggestions.

Principle number one, and to me this underlines everything about the Ombudsman: The Ombudsman is about justice, about fairness. The Ombudsman is not about legality. All manner of things may be entirely legal, but unfair. That's the whole premise of why you have an Ombudsman.

Accordingly, I have to take issue with the sentiment expressed yesterday by Mr Justice Morand. I do not believe the Ombudsman is like a judge. In some respects there is an analogy, but I think it's a mistake to carry that analogy too far. For starters, I think the Ombudsman has a more difficult task than a judge does. It's far more difficult to sort out fairness than it is to sort out legality.

A corollary of this principle, to me, is that the Ombudsman has been and continues to be overly legalistic in her approach to dealing with complaints that come before her. There are several cases cited in this committee's 19th report that I believe illustrate the overly precise and legal approach the Ombudsman takes. I hasten to add that it's easy for me, as it's easy for this committee, to say the Ombudsman is overly bureaucratic and overly legal. It is not necessarily that easy to change that approach. However, it still seems to me that the Ombudsman has an overriding approach dealing with and premised on legal precision, rather than promoting fairness and justice for complainants. There should be, in my view, more emphasis on problem-solving and on dispute resolution.

When I worked for this committee, I had occasion to read a fair number of decisions made by the Ombudsman, the final decision reports that went to the complainants. They were meticulously researched and they were convincing legal documents, but in many ways, attempting to read these documents from the perspective of the complainants, they often seemed to be stepping sideways from the basic issue: Was this person dealt with fairly?

The easy explanation for why this approach is there at the Ombudsman's office—and this is very much in keeping with previous ombudsmen, I should add—is partly because there are too many lawyers. However, it's also partly because of this committee. If you look at the origin of this committee, if you look at the way it conducted its business in the early days and continues to, the Ombudsman, quite properly, took it on the chin a number of times from this committee for investigations that were not as thorough as they should have been; the documentation was inadequate.

They are smart people at the Ombudsman's office. They knew what to do. The answer was to document

everything with extreme thoroughness in possible anticipation of having to appear before this committee. What I'm suggesting to you is that part of the reason the Ombudsman is a slow operation, part of the reason there is what many would say is excessive documentation and bureaucratization, is because the Ombudsman constantly has to wonder, and the Ombudsman's staff has to wonder, about coming before this committee. In short, you are part of the problem and I think you need to recognize it. This is simply, in my view, a cost that needs to be paid to have this committee in operation, which I think on balance is a very good thing.

The second principle that to me underlines the Ombudsman is that the Ombudsman is an officer of the Legislature, doing work on its behalf that the Legislature could well do on its own in a way that's probably not true of other independent offices like the auditor and the Information and Privacy Commissioner.

In several other jurisdictions in the Commonwealth, in Britain and New Zealand, for example, and I believe still in Newfoundland, the Ombudsman is called the parliamentary commissioner, and to me that's a fairly telling reminder of what this person is there to do.

Those of you who may have suffered through political science courses will probably have had someone natter at you about one of the roles of a member of a Legislature called the ombudsman function. People speak of the ombudsman function of members of the Legislature and the ombudsman function of members of the Legislature was here long before there was an Ombudsman.

Having said that, principle number three is that the Ombudsman must be independent of government and politics. However, the Ombudsman does not have, nor should she have, absolute independence. If you think about it, there are already very serious constraints to the Ombudsman's independence. For starters, the assembly can restructure the Ombudsman through amending the act, or for that matter, abolish the institution itself. The Legislature determines the Ombudsman's finances, and quite significantly, to me, the Legislature, through this committee, can make rules for the Ombudsman unlike, I might add, the auditor or the Information and Privacy Commissioner. There are no similar provisions in the Audit Act or the Freedom of Information and Protection of Privacy Act.

In my view—and I have a number of good friends who formerly worked at the Ombudsman's office who are diametrically opposed to this view but I persist in it none the less—every Ombudsman has been overly sensitive to perceived threats about the Ombudsman's independence from this committee. If you look at the historical record under Arthur Maloney, under Justice Morand, there is no question in my mind that it shows that the independence of the Ombudsman is not a fragile, exotic, hothouse plant; it's a hardy perennial. I really see very little reason for the Ombudsman to be worried about the incursions into her independence by this committee, although I do have, for your consideration later, one area in which I believe the Ombudsman is justified in her concern.

I've watched, periodically the last week, some of your hearings and I've seen you wrestle with the question of



reconciling accountability and independence as far as the Ombudsman is concerned. I have the answer for you. The answer is that there is no answer, because when you get right down to it, when you're talking about the Ombudsman, accountability and independence are fundamentally incompatible. You grant the Ombudsman independence and by the very act of having done that you reduce accountability. That's the price you pay for the Ombudsman's independence and I believe it's a price worth paying.

Now I should say here that financial accountability is not the issue. That's easy. Audits that can be done, are done. If there are concerns that the Ombudsman has paid too much money for a computer system or whatever kinds of things auditors get excited about, that's easily resolved. The auditor has a handle on it and can go to the standing committee on public accounts. That's pretty straightforward.

The much more difficult question is, what happens when somebody thinks the Ombudsman has done something improper or has conducted an inadequate investigation? That's surely the issue of accountability here.

1040

We need to stop, I think, though, and ask, "What are we talking about with accountability?" My view would be that there are at least two fundamentally different notions of accountability that are constantly being mixed up, not just with the Ombudsman but any time the word "accountability" surfaces.

The first meaning is that accountability means someone has to respond to criticism and explain his or her actions. The second version is that the same response and explanation takes place and there are sanctions to be imposed on the person or organization if those actions are inappropriate. To me, one of the premises of granting the Ombudsman independence is that you have to be satisfied with that first type of accountability; namely, response and explanation without sanctions.

The fifth general principle is that the Ombudsman has no power to make the government act. The Ombudsman achieves her results through the credibility of her process, her investigations, through the force of evidence and argument, through suasion.

It's important to recognize what results mean here. To an extent, clearly results mean that injustices perpetrated on complainants are rectified. However, there are two other important results the Ombudsman can achieve and does achieve. The first is to satisfy a complainant that he or she had a fair shake. The morning thought du jour in the *Globe and Mail* today was a quotation from Lord Chesterfield, who in effect said, "A person may not really want so much to have his case won as to be given a fair hearing." To me, in a great many ways, that's what the Ombudsman is about.

In addition, however, the Ombudsman achieves effects in a very similar way to what the auditor does; namely, simply by being there and having credibility and having this committee behind her, the Ombudsman improves the standard of administration in this province. An important corollary of this principle is that this committee is a very important part of the Ombudsman's effectiveness.

This gets to a rather touchy issue that to me is principle number six; namely, the Ombudsman and this committee should be working towards the same goal and there must be mutual respect and open communications between the committee and the Ombudsman.

Let me strongly commend to your attention, if you have not already seen it, an article that appeared in the *Canadian Parliamentary Review*, 1984, by a former chairman of the committee, entitled "Ombudsmen and Legislatures: Allies or Adversaries?" This, to me, is a very measured review of the issues that arise between ombudsmen and Legislatures, with a particular view to how this committee has interacted with various ombudsmen.

One of the corollaries of my view of open communications and mutual respect being required for the process is that there should be regular, informal meetings between the Ombudsman and representatives of this committee, the Chair, and if there exists an all-party subcommittee—which I believe there should—that subcommittee, just to talk over problem situations and keep the lines of communication open. Similarly, the Ombudsman, in my view, should always be prepared to come before this committee to discuss issues of concern to this committee.

Having set out what to me are the principles, let me turn to some suggestions, first about how this committee operates. I guess it's in a way reassuring to see that it encounters the same problems it encountered when I was here, one of which is that it receives profound ignorance and rejection from the House. The House really doesn't take this committee as seriously as it should. Perhaps rejection is an unfair comment, but certainly being ignored is the standard procedure for this committee.

Let me suggest to you one way of dealing with it. I worked here for eight years. I think I have some understanding of the kind of priorities before the House and what makes the place tick. It will be ever thus. One way of improving the committee's lot, therefore, is to change the committee's order of reference, have the Legislature change the committee's order of reference, so that recommendations from this committee are automatically deemed to be accepted by the House unless specifically overturned by the House within a specific time period. This is analogous to what happens in one phase of the public appointments review by the standing committee on government agencies.

It is my view that recommendations from this committee to support the Ombudsman's recommendations about government agencies do not have legal binding force. I presume that's accepted by the committee, which is to say it's not as if this committee can twist the government's arm. This committee, like the Ombudsman, can apply suasion, force of argument in evidence, but cannot make the government do what the Ombudsman or the committee wants.

Perhaps to slip into a fit of naïveté here, it's particularly important to me, given the long history of the Ombudsman's office and the conflicts between this committee and the Ombudsman and indeed the nature of the process itself, that there be continuity in this committee.

Having watched just this last week, many of the faces I watched on TV aren't here any more, and I understand,



that's how the place works, but to me it is particularly important that this committee have some continuity, have some kind of institutional memory. That, to an extent, is here with the committee staff, but it also needs to be here with the members.

One of the questions I was invited to comment on—and I won't comment particularly other than simply to give my view—is the question of this committee's involvement with the appointment of the Ombudsman. To me, it's crystal clear that this committee should be very closely involved with the appointment of the Ombudsman.

Another question that arises is, should the committee have jurisdiction over the Ombudsman's estimates? The answer to me is yes, for the reasons set out in the most recent committee report. I should add that in my view this will have virtually no effect on anything. It will neither represent any kind of incursion into the Ombudsman's independence, nor will it enhance accountability.

For the record, yesterday I saw Mr Justice Morand talk about this committee's repeated attempts to obtain jurisdiction over the Ombudsman's estimates, and he indicated that in his term that request was never granted. That may be technically true. I don't know exactly when his term ended, but shortly after, if not at the very end of his term in office, this committee or its predecessor was in fact granted jurisdiction over the estimates, and it made no never mind to anyone.

I have read the Macaulay report, the second dealing with the Ombudsman, and I must say there are some fairly deep issues here that I haven't entirely resolved in my own mind. On initial reading, I find his arguments fairly persuasive and I would commend them to you for serious thought. I'm not sure if I agree entirely. I think he may go a little too far in some places, but I think he raises some very significant issues that this committee needs to consider.

The committee's 19th report recommended that there be a value-for-money audit conducted on the Ombudsman's office. The rationale for this, at least in the report, was not particularly clear to me. In fact, I must say there was a certain element of a fishing expedition here.

My suggestion to this committee would be that you have a chat with the Provincial Auditor—this is assuming we ever have a Provincial Auditor—about what exactly a value-for-money audit could achieve. If there's a concern with case flow, with the "efficiency" of the Ombudsman's office, say so. The money that might be spent on a value-for-money audit by the Provincial Auditor might well be better spent on a team of management consultants from an outside consulting firm; I don't know. I'm not sure that a value-for-money audit, unless there's a very clear reason for doing it, is necessarily a good thing.

1050

The second from final area I want to talk about is an area where I believe, from reading this committee's most recent report, it has gone too far in pursuing communications from the public. In this respect, I believe the Ombudsman has a legitimate, dare I say, complaint against this committee.

Historically, and according to the information in your most recent report, the committee has refused to second-

guess or reinvestigate decisions by the Ombudsman, and I fully support that view. However, to me, some of the cases reported in your most recent report come uncomfortably close and in fact cross the line into telling the Ombudsman how to do her job. This gets back to the principle earlier, that a certain amount of accountability has to be given up in order to give the Ombudsman proper independence.

On one side, to me it is unfair that this committee only pursues, looks into—whatever phrase you care to pick—complaints against the Ombudsman that someone has had the wit or ability to address to this committee. Most people don't know it's possible to do that, and it seems to me it's unfair that some people get this treatment and some people don't.

There is also, of course, a potentially very large numbers problem once you get to the issue of everyone wanting this committee to review decisions made by the Ombudsman. But much more important to me is the underlying principle there; that is, quite simply, that in my view it is inappropriate for the committee in effect to tell the Ombudsman whom to interview and how to conduct an investigation.

Now, I recognize that the recommendations in your most recent report were done in good faith, with an intention to help complainants, but to me these are unwarranted intrusions on the Ombudsman's independence.

This does not, however, resolve the very difficult issue of what happens when someone comes to this committee with an apparently legitimate complaint about the Ombudsman's actions. I don't mean, "I don't like what the Ombudsman decided here and I think it's unfair." It could be an issue such as was raised in your report that the Ombudsman perhaps should have interviewed X, and maybe the Ombudsman should have interviewed X. Similarly, I heard earlier in the week the account of the complaint of the Georgian College students, where on the surface there seemed to be a reason to wonder what the Ombudsman was doing. These are the tough issues raised by this whole area of communication from the public.

I offer you two suggestions. The first is to look at these areas in terms of general problems. Two of the recommendations in the most recent report involved delays and that the Ombudsman write to complainants explaining why these delays took place.

It seems to me entirely legitimate for this committee to suggest to the Ombudsman and, after discussion, perhaps use its rule-making power to put a rule in place for the Ombudsman that, after a certain point in time—a year, 18 months, whatever; it doesn't particularly matter—every complainant receive some kind of explanation as to why things took so long.

That, to me, is acceptable. But looking at the specifics of a case and saying, "Tell this complainant why you did such-and-so or why it took so long" is not acceptable. That won't resolve all the issues. It will still leave some up in the air and unresolved.

My best suggestion to you here is that there be informal communications with the Ombudsman, not an open committee meeting, in which the issues are raised and discussed. In the end—this is the price—I believe you have to



trust in the best judgement of the Ombudsman to understand those problems and to work towards resolving them.

This presumes that the Ombudsman in turn is open and willing to discuss issues, without, of course, breaching confidentiality. I understand that this is a very significant constraint on the Ombudsman in dealing with such problems, but the Ombudsman has to be willing to be open to discussions from this committee.

With that, I'm prepared to discuss or attempt to answer questions.

**The Chair:** Thank you very much, Professor White. Comments or questions?

**Mr Ramsay:** Thank you very much for coming before the committee today. Speaking for myself, I thoroughly enjoyed your presentation. I thought it was very helpful in our deliberations. I found it very well balanced in defending the rights of the Ombudsman, as we all do, in her entitlement of independence from the Legislature in her decision-making.

Thank you for some specific suggestions as to how maybe we can resolve some of these problems in general as to the previous case that was before us, about communicating with complainants. That might be a good idea, to have some general rules set down so that people know that every six months, or whatever it was, they'd get a notice of the progress of their cases or something like that. I think that's excellent.

I want to talk a little about the financial accountability. You had said you didn't really see that as a problem, that there are processes in place, with the public accounts committee taking on that role and the estimates committee taking on the role of examining estimates for the Ombudsman's office.

However, it's a \$9.4-million operation at this time, and it seems to me that sometimes there may be a need for a more thorough investigation. That's why this committee had asked, in its 19th report, for a value-for-money audit, as we have been hearing certain complaints about office procedures and this sort of thing and we want to assure the taxpayers that their \$9.4 million is well spent. It really wasn't a fishing expedition. We feel, as you say, that the mere existence of the public auditor keeps government agencies and ministries in line; you're right. But going through the process of thorough examination as to how an office operates can also find deficiencies that can be corrected on all our behalf, which is excellent. So it really wasn't a fishing expedition. When we hear of some things, we like to get them fixed up.

How do you differentiate between wanting to make sure, as legislators, that the office is running well and, through that, that people are served well in their case investigation, and at the same time making sure that as far as the decision-making process goes, we're not interfering in that at all? I guess I'm getting back to the reconciliation question again, but there are some definite concerns we would have about the operation of that, and would like to get involved.

**Dr White:** Involved with—?

**Mr Ramsay:** Involved with the correction of those perceived deficiencies. The first thing is to investigate whether there are these deficiencies. By the way, we did have a meeting with the public auditor yesterday morning, so we have gone through what a value-for-money audit would entail, and several of the members have made some suggestions about other types of auditing procedures. So we're very confident that we will have a good job done by the public auditor.

It's interesting that in the report that you may have seen, the special report of the Ombudsperson, she now is wondering whether the public auditor is the appropriate official to be looking at her jurisdiction and her office. That's an interesting question she puts forward.

Do you feel that it is the right and the obligation of the Legislature, through this committee or some other committee, to ensure that the office is well run?

**Dr White:** Absolutely. However, what does that entail? It entails audits. One of the reasons I was a little sceptical of the value-for-money audit was that it seems to me, knowing a little how value-for-money audits work, that there is only so far they can go in this kind of an exercise.

Certainly if there is a more efficient way to manage the paper flow at the Ombudsman's office, allocation of staff and so on, that can be turned up through a value-for-money audit. So far as I know, all previous auditors have welcomed anybody's suggestions about how to make the place run more smoothly in that mechanical, administrative way.

1100

But again, the more difficult issue is the spirit in which you approach an investigation. How do you do an investigation? A value-for-money audit will not tell you anything about that. Value-for-money audits are very good at looking at inputs and outputs that are easily quantifiable. Unfortunately, what we're dealing with here is justice and fairness, which are about as far from being quantifiable as you can imagine. So you're still back in the dilemma of trying to keep tabs on and hold the Ombudsman accountable for the way she goes about her investigations.

My view is that it's perfectly legitimate for you to raise questions, and one of the great traditions of this committee is to give the Ombudsman a hard time about why it takes so long to get anything done and why so many cases took so long. This is an inevitable aspect of the process, in my view. Not that it can't be improved, but it will always be there. But after a certain point I think you have to trust that the Ombudsman has heard what you're saying and has the best interests of justice in mind; that she was placed there in an independent position for a long period of time and you simply have to accept and trust her judgement.

The way the act is constructed, the way the philosophy of the Ombudsman works, you have given up some of that normal accountability process in order to gain independence for this officer of the assembly.

**Mr Ramsay:** A value-for-money audit, though, could potentially identify problems that might be systemic to the office that are then causing problems with the performance



of that office in serving the people the Ombudsman is sworn to serve.

**Dr White:** Quite so, sure.

**Mr Ramsay:** For instance, if, as we're starting to hear, there are major turnovers of staff, there are obviously tremendous inefficiencies there, as new people now have to be trained for a highly specific task. If you start to hear that there is disagreement between those people who have now separated, either by themselves or by the Ombudsman's office, from that office and lawsuits and this sort of thing are going on, not only is there money being eaten up but also a lot of time and attention being focused on trying to patch the place up, if that's what's happening—I'm just giving this as an example—rather than serving the public. So I think from time to time it is beneficial to have—

**Dr White:** I don't disagree. My point was simply that I thought the committee needed to be clear on what a value-for-money audit might achieve. So long as that's the case, sure, go do it.

**Mr Mammoliti:** I want to touch on the accountability aspect again. It's something I'm very confused about. As a new member, I think I have the right to be confused from time to time.

If the public continually believes that their MPP should intervene—that's not to say that the MPP should, but that they believe that the MPP should—does that not warrant accountability to the Legislature and to this committee to a degree?

**Dr White:** I think not. Let me offer what, to me, is an analogy. I'm not sure if this will make sense to you. Both in talking to people, the public, about the Ombudsman's office when I worked here and in my current guise in talking to my students about what an Ombudsman does, one of the most difficult things to get across is that the Ombudsman does not simply look at a case and decide on its merits and say, "If it were up to me, I would give this guy compensation because I really think he hurt his back, even though the board didn't." That's not what the Ombudsman is about. The Ombudsman has to be satisfied that a Workers' Compensation Board decision or a similar decision was unreasonable; not that the Ombudsman would have come to a different conclusion, but that it was unreasonable.

What I'm getting to is that almost no one in the public understands that. I can't get my students to understand, so similarly, the public will not understand. Listen, it's a price; it's one of the bruises I think you have to accept as a member, that your constituents will not always understand the independence of this office.

**Mr Mammoliti:** Frankly, a lot of the public doesn't even know what an Ombudsman is, and I recognize that as well. But let's try it from this angle: The eyes of the public, the eyes of the average Ontarian, see the staff in the Ombudsman's office as civil servants. As civil servants, wouldn't that warrant accountability by the Legislature and by this committee? If so, and if you agree with me there, and I'm not even sure if I agree—

**Dr White:** No, I don't.

**Mr Mammoliti:** Okay. Some of the recommendations that have come into my office—and I'd like to know how you feel on this—are to keep them totally separate, a hands-off approach, and as well, to get them completely away from the civil service. How do you feel about that?

**Dr White:** I think the current setup, the current structure, is working adequately and it's the way you want things to be structured. You have to be sensitive to it, but I don't think you can set up and amend the Ombudsman Act on the basis of public misperceptions.

We all live with misperceptions about what we do and we try to correct them. But I think you have to look at what an Ombudsman is supposed to do and you make a decision as to how much independence she has and how much accountability she has, and what you think is the right thing to do. You try to explain that to your constituents and to the public, as does the Ombudsman.

I know the Ombudsman always has lots of people who are greatly aggrieved that this wasn't, in effect, the public defender approach where the Ombudsman would take a person's side no matter whether the Ombudsman was right or wrong. The whole office is very unusual.

**Mr Mammoliti:** I just have a hard time defending when a constituent comes to me and says, "Yes, George, I hear what you're saying. This office is supposed to be independent, a hands-off approach, yet the pensions are the same as the civil service. They are civil servants," and the question that comes from a constituent is: "If that's the case, if they're not supposed to have anything to do with government except report to the Legislature, then why is this happening? Why are they civil servants?" That, I think, is a question that is valid. I think it's something we may have to take a look at.

**Dr White:** At the risk of going back on what I said earlier, I suppose it is at that juncture where one invokes the analogy of the courts, and to say that in some ways, and I agree that in important ways, there are court-like elements to the Ombudsman. Perhaps that's the best answer to your constituents.

**Mr Mammoliti:** Okay. Last question, I promise.

Staffing, internal problems: A question I've asked everybody, and we haven't gone out to seek these letters and this opinion from the public, they voluntarily have come to this committee: Should we just ignore them? Shouldn't we deal with the fact that some people are saying 80% of the staff in the Ombudsman's office is looking to leave?

I think this committee has a valuable role to play, if in any capacity, in that capacity itself to look into the internal problems and what we can perhaps suggest to try and solve them. I think that investigating this particular issue is valid and is warranted. How do you feel about that?

1110

**Dr White:** I agree that the morale and the administrative effectiveness of the Ombudsman's office are legitimate concerns for this committee. It's a legitimate topic for discussion in this committee with the Ombudsman.

The question is, having discussed this and if you're not satisfied with what the Ombudsman thinks or proposes to do, what then? It seems to me you can only go so far. You



draw this problem to her attention, you talk about it with her—perhaps not in an open session; that's at your discretion—but in the end, if it gets so bad that it's such a total disaster, there is provision for removing an Ombudsman.

That's a pretty stark, ultimate weapon the Legislature has, but short of that, it seems to me that one has to work on a basis of good faith here on both sides. You hear of problems, you bring them forth openly to the Ombudsman, she responds as openly as she can, and you have to trust in her judgement to deal with these things.

**Mr Anthony Perruzza (Downsview):** I'm a new member on this committee. This is my third day, and I don't have the kind of experience that some of my colleagues around this table have. I've been trying to grapple with some of the frustrations that have been expressed over the past three days about this committee's inability to be able to talk to the Ombudsman that we now have.

I've never been familiar with the office, but I'm beginning to understand it a little bit, and I'm not quite clear about some of the things that you said. I really enjoyed your presentation because it cleared up a number of issues that have been floating around in my mind now for the past three days, but I'm not quite clear on the advice you're giving this committee on how to proceed with the issue that's before it now.

Irrespective of what the role of the Ombudsman is or the role of the office as you see it, in terms of its arm's-length status and its ability to function as an independent office within a government structure, the issue that's before us now is whether or not we should be talking to the Ombudsman.

I'm not quite clear on what the committee's intentions are in terms of a review or in terms of an investigation. What I've been reading about in the papers, that's something I'm still trying to clear up in my mind as well. I don't know how far the committee wants to proceed with that. Given that, what are you telling us we should do?

**Dr White:** With respect to what?

**Mr Perruzza:** To the issue that's before committee now, our inability to meet with the Ombudsman.

**Dr White:** I don't know the ins and outs of what sort of invitations have been put forward, but one of the things I did indicate earlier and I believe in quite strongly is that the Ombudsman should always be prepared to come when this committee asks her to come. She may sit here and tell you that certain questions you ask are inappropriate and none of your business, and depending on the circumstances, it may or may not be fair ball, but she should always be willing to come.

**Mr Perruzza:** If you invite the Ombudsman and the Ombudsman refuses to come, then what would you do?

**Dr White:** I think it would depend on the circumstances. I find it hard to imagine an Ombudsman refusing to come.

**Mr Perruzza:** What if you repeatedly invite the Ombudsman to appear before the committee and the Ombudsman refuses to appear?

**Dr White:** I'm not really comfortable dealing with hypotheticals, but it seems to me that there's a clear duty for the Ombudsman to come.

**Mr Perruzza:** But if the Ombudsman doesn't come, then what would you do?

**Dr White:** In the end, there is a provision in the act for the committee to ask the Speaker to issue a warrant, but I can't imagine things going that far.

**Ms Haeck:** Thank you, Dr White. We must have been on the same wavelength this morning, because at about 9:30 I was making a comment to a fellow legislative researcher about the regular contacting of complainants, or basically constituents, by not only the Ombudsman's office but I think by government in general.

Having been a librarian for many years and dealing with the public on a very one-to-one basis and now in this office, my sense is that people just like to have the sense that somebody's actually working on their file. They like to have that, maybe not every week, but they would like to have it on a fairly regular basis, that somebody is doing something, that it isn't lost in the bowels of government, never to be seen again. So thank you for that recommendation.

I guess also, for someone who has been on this committee for a little over a year, I have sometimes wondered at its value and whether we're really doing a job. So I'm interested in your statement that we do support the Ombudsman.

I had to leave for a minute to deal with a constituent problem. Could you just repeat for me how you see this committee being helpful to the Ombudsman and how we can, publicly even, have a role? So far it has been for most of us an exercise in frustration as to not really being able to help the complainant or seeing ourselves being supportive of the Ombudsman, because the communication lines have not necessarily been functioning as well as they might.

**Dr White:** I don't know whether this is a function of a significant change over time or whether it's simply happenstance, but as I understand it, the last two Ombudsman reports had no recommendation-denied cases.

**Ms Haeck:** That's right.

**Dr White:** The whole genesis of this committee—and when I worked for it, the vast majority of time it spent was having the Ombudsman's staff here in the morning and the ministry staff here in the afternoon going over in gruesome detail the specifics of cases in which the Ombudsman's recommendation to a government agency had been denied. It had gone to the Premier, and turns up in the Ombudsman annual report.

That, to me, both in the specifics of an individual case—and if you look back over previous committee reports, you see that the vast majority of their recommendations are about, "In case X, the Workers' Compensation Board should do such-and-so" or what have you. They were of that nature. You have those specific cases, on which usually this committee would support the recommendation of the Ombudsman, although, as I said earlier, this has no binding legal force, but to me it had a significant moral and political force to it.



At the same time, and this may be the explanation for why there are fewer of them, it became obvious to the bureaucracy that once the Ombudsman made a report on a recommendation in a denied case, that would not be the end of it. There would be a public forum where those bureaucrats had to come and justify their turning down what the Ombudsman recommended.

This is something one cannot possibly quantify, but I have a fairly strong feeling that this in itself, just the knowledge that the Ombudsman was there and this committee was here, changed the way bureaucrats would operate. They would therefore be more willing to accede to a recommendation of the Ombudsman, properly supported of course, knowing there was the possibility of coming to this committee.

Sorry, that's kind of long-winded. That, to me, is the most important way in which this committee fits into the process and supports the Ombudsman.

**Ms Haeck:** Actually, that's most illuminating, because it also fits into some of the comments that Justice Morand made yesterday with regard to how the cases should diminish, basically, over time. Certain cases should diminish for the simple reason that somebody in the ministry would finally figure out that they should change their procedures to reflect the decisions.

I guess I just never felt that perfection has been achieved or is even possible. So I guess having no recommendation-denied cases over two years again is sort of hard to fathom, since obviously the cases haven't stopped being seen by the Ombudsman, and we're definitely not perfect.

I would just follow up another line of questioning, which I did ask Mr Morand. It relates to performance evaluation of the office, and not just strictly individuals, but whether the office is doing the job.

I know we really generally deal with it in a hands-off manner, no matter what kind of questions we're asking now. Most of us have not been somehow inducted into the mysteries of that office. But in these, as you say, hands-off, arm's-length situations, how does one determine, how do we deal with developing a performance evaluation and determining if the office is doing the job? It follows up somewhat on Mr Mammoliti's question about you get a sense that things are not necessarily going well, but you're also told to stay away. Having the final responsibility I think in the public's eye, how do we achieve, not nirvana, but some sort of good administration?

1120

**Dr White:** I think you use the normal tools. If you think it useful or the auditor thinks it useful, a thorough-going value-for-money audit could well reveal some ways of improving the office. But fundamentally I think it comes down to, you talk to the Ombudsman. Perhaps I'm being naïve here, and nirvana, but it seems to me that you and the committee are in the same business as the Ombudsman; namely, trying to rectify injustices.

Doubtless you, individually and collectively, will have different views on particular cases, but you're all in it together and it's incumbent on you to be reasonable, having

pointed out some problems in areas you're concerned about, to trust the Ombudsman. It's incumbent on the Ombudsman to be reasonable in accepting your criticism, suggestions and concern.

**Ms Haeck:** I guess sometimes we feel we're rowing in different directions.

**Dr White:** This is not unknown in the previous history of the committee.

**Ms Haeck:** I suspect so. Just another question which is something we've had to wrestle with in looking at this review is, do you feel the jurisdiction over which the Ombudsman now has sway should be expanded? I know children's aid societies was one that came forward under Bill 80, but there are a lot of other agencies out there which the government funds where people would really like to finally have a chance at being heard. Any comments?

**Dr White:** A couple. I'm a little twitchy about offering any kind of definitive opinion on things like children's aid societies and hospitals, because I don't really know much about how they operate and I don't know much about the accountability mechanisms they have. Certainly, to me, bodies like municipalities should not be included. There is a whole other level of accountability. If the local politicians want to have an ombudsman, well and fine. Most universities, including my own, have an ombudsman. I wouldn't like to see the Ombudsman investigating my university. I'm quite happy to have my ombudsman investigate my university, or me.

However, there are a few of the specific agencies that were listed in the committee's report about should jurisdiction be expanded. To me, agencies like the law society and the home warranty—I live in the past. I don't think it's—

**Ms Haeck:** The Ontario home warranty plan.

**Dr White:** Right—should be. The principle, to me, should be that a body that is exercising governmental powers, like the law society does, that doesn't have other clearly public accountability routes—the law society is accountable but essentially to the profession. It should be accountable to somebody else, and I would suggest that it would be appropriate to be through the Ombudsman. Those kinds of bodies should be.

When you get to children's aid societies and hospitals, there are very deep issues there I just haven't thought through. I think on balance I'd tend not to.

**Ms Haeck:** That's great and I really appreciate all your comments.

**Ms Zanana L. Akande (St Andrew-St Patrick):** You've been very clear about what you think about the committee's possible involvement in terms of budget and how accountability there may be affected. I'm wondering, though, about process. Many of the concerns we receive from people who have been before the Ombudsman and have been less than satisfied really relate to process, their feeling—not necessarily knowing, but their feeling—that it had not been adequately investigated because certain people hadn't been asked or certain people hadn't been questioned or there had been no communication between certain groups.

That brings me to my point. Would you feel that it would be appropriate for this committee to define a process that should be followed by the Ombudsman, not to the point of outlining exactly where to step but to the point of making sure that all bases were covered before a decision was made?

**Dr White:** On balance, I think not. I'm not sure what a rule formulated by this committee about the Ombudsman process would look like that wouldn't be either so vague as to be useless or so precise as to triple the paper burden they already have.

I'm interested that you refer to, in effect, inadequate investigations. The experience I have to offer is somewhat dated, but certainly when I was clerk of this committee, from 1980 to 1984, I had a fair bit of involvement with ombudsmen in other provinces, and every contact I had showed me that this office was far more thorough, far more detailed in its investigations than any other office. The other offices simply didn't have the resources to pursue cases the way the Ombudsman did here. If anything, the criticisms one heard were that they were too bureaucratized, too slow, because of all the specific steps they had to go through, all the reports that were required, all the things that had to be put on paper.

Again, perhaps the bottom line, given the expertise at that office, given the expertise in the international ombudsmen committee, is that I think you have to trust the Ombudsman to know how to run an investigation. If you have evidence of systematic problems, then you might want to talk to the Ombudsman about it and pass a rule perhaps on this business about how long it takes to process cases.

**Ms Akande:** Actually, Professor White, I was referring to perceived inadequate investigations by those people who receive the judgements, not actually implying that this was my opinion, but concerned about being in a position to respond to or at least feel that the process followed had been sufficient and had been adequate and had been such that the decision was not spurious, being put in that position by receiving the presentations of those who were dissatisfied. You would not see that route as being appropriate?

**Dr White:** No, I wouldn't. As I said earlier to Mr Mammoliti, I think in some instances it's just one other area where we have to take some lumps from your constituents because of their views of how government should or should not operate. Similarly, from my experience when I would receive communications from the public, the vast majority of them, although they would often cloak—that's unfair—they would often phrase their complaints about the Ombudsman in terms of process, what it really came down to was: "I don't like the Ombudsman's decision and I will never accept it. What other avenue do I have here?"

**Ms Akande:** In view of that and in view of some of the comments you made earlier—I promise this will be exactly the very last thing I say—do you really feel that the office is justified?

**Dr White:** Yes, I do.

**Ms Akande:** Why?

**Dr White:** Because it offers redress of specific grievances and it offers a non-governmental, highly professional way of assuring people that they were fairly treated. There are doubtless lots of problems there—there will also be lots of problems in any ombudsman operation—but on balance I think it's unquestionably a good thing to have.

**Mr Ramsay:** Just a very short question, Professor White: In helping us examine the legislation, I was wondering if you have any recommendations as to the length of tenure of the Ombudsman.

**Dr White:** It's currently 10 years.

**Mr Ramsay:** Yes, that's correct.

**Dr White:** I haven't thought it through terribly hard. I think I would be inclined to have a somewhat shorter tenure; 10 years is a very long time.

**The Chair:** Seeing no further comments or questions, Professor White, I want to thank you for appearing before us this morning and for that awfully thoughtful presentation.

**Dr White:** You're very welcome, Mr Chairman.

**The Chair:** This committee now stands adjourned till next week.

The committee adjourned at 1131.









## CONTENTS

Thursday 20 August 1992

<b>Review of the Office of the Ombudsman</b> . . . . .	B-51
Delbert Dupré . . . . .	B-51
Graham White . . . . .	B-53

### STANDING COMMITTEE ON THE OMBUDSMAN

- \*Chair / Président:** Morrow, Mark (Wentworth East/-Est ND)
- \*Vice-Chair / Vice-Présidente:** Haeck, Christel (St Catharines-Brock ND)
- \*Akande, Zanana L.** (St Andrew-St Patrick ND)  
Drainville, Dennis (Victoria-Haliburton ND)
- \*Duignan, Noel** (Halton North/-Nord ND)  
Henderson, D. James (Etobicoke-Humber L)
- \*Johnson, Paul R.** (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)  
Miclash, Frank (Kenora L)  
Murdoch, Bill (Grey PC)
- \*Perruzza, Anthony** (Downsview ND)
- \*Ramsay, David** (Timiskaming L)  
Witmer, Elizabeth (Waterloo North/-Nord PC)

#### **Substitutions / Membres remplaçants:**

- \*Curling, Alvin** (Scarborough North/-Nord L) for Mr Miclash
- \*Jackson, Cameron** (Burlington South/-Sud PC) for Mr Murdoch
- \*Kwinter, Monte** (Wilson Heights L) for Mr Henderson
- \*Mammoliti, George** (Yorkview ND) for Mr Drainville
- \*Wilson, Jim** (Simcoe West/-Ouest PC) for Mrs Witmer

**\*In attendance / présents**

**Clerk / Greffier:** Carrozza, Franco

**Staff / Personnel:** Murray, Paul, committee counsel and research officer, Legislative Research Service

B-5



B-5

ISSN 1180-4300

## Legislative Assembly of Ontario

Second session, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 25 August 1992

### Standing committee on the Ombudsman

Review of Office  
of the Ombudsman

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

mardi 25 août 1992

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Examen du Bureau  
de l'ombudsman



Chair: Mark Morrow  
Clerk: Franco Carrozza

Président : Mark Morrow  
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### **Table of Contents**

Table of Contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

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La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday 25 August 1992

The committee met at 1010 in room 151.

### REVIEW OF OFFICE OF THE OMBUDSMAN

**The Chair (Mr Mark Morrow):** I'd like to call this committee to order. Good morning. I'm Mark Morrow; I'm Chairman of the standing committee on the Ombudsman. We are reviewing the office of the Ombudsman this week, as a motion in the House July 23 allowed us to do.

JOHN BELL

**The Chair:** This morning we have appearing before us John P. Bell, former legal counsel to the committee. Good morning, sir. You have the morning to talk. I hope you will allow some time for the committee members to ask you questions and/or comments. Begin when you feel you're comfortable. Although I've stated your name in the record, could you please do so.

**Mr John Bell:** Yes. My name is John P. Bell. I'm a lawyer with the Toronto firm of Shibley Righton and a former legal counsel to this standing committee and its predecessor, the select committee on the Ombudsman.

First of all, Mr Chair, let me thank you and the clerk of the committee for extending the invitation to me to appear. I might say that I've been in this room lots of times, performing a function for this committee at the other side of the room. I've never been at this side of the room. It's unique. I trust members, and particularly Mr McLean, will not yell at me and demand that I answer the question.

In any event, Mr Carrozza sent me a letter setting out the certain broad parameters of the committee's review, together with the list of questions prepared by your legal counsel and this committee's 19th report setting out its business in respect of the issues relevant to your inquiry.

I don't have a formal presentation prepared but I propose to give you, with your permission, some general observations, including, if you'll forgive me, a short history lesson or history review with respect to this committee, because I believe that review sets very firmly the background of this committee, what it is, what its operations have been and what they should be. Then I'll try to fit the Ombudsman into that operation and tell you what I fervently believe, and that is that the Office of the Ombudsman in Ontario, in my view, cannot effectively function without a standing committee of the Legislature, and anybody who thinks otherwise, respectfully, doesn't understand what the Ombudsman is about in this province.

As you know, this committee was born of controversy back in 1976 when then-Premier Davis and then-Ombudsman Arthur Maloney reached an impasse respecting the North Pickering inquiry of Mr Maloney respecting claims of certain former land owners. The committee was struck during the summer vacation as a device to try to resolve the outstanding issues.

The committee, when it began its deliberations, immediately adopted the role of a body of inquiry. It was bent and determined to examine the issues that were creating the impasse between the two parties and, in an active and proactive way, be instrumental in the resolution of those issues. In fact, it was quite instrumental in the resolution of those issues, because just as the first witness in the inquiry was to be sworn, Mr Maloney and the then Minister of Housing, John Rhodes, announced an agreement towards the resolution of the matters of impasse.

The committee saw enough of the operation of the Ombudsman, then in its very early stages, to decide that it needed to stay around on a more permanent basis. It was glaringly apparent that without a vehicle of the Legislature always at the ready, the Ombudsman lacked the ability to be truly effective in bringing a recommendation forward to the House. I don't have to remind you how long matters sit on the order paper and how long, if ever, matters take to be debated in the Legislature. There had to be some more immediate and effective means for the Ombudsman, and through the Ombudsman the public, to have these recommendations that were denied by governmental organizations addressed. That's one of the reasons why the committee decided it should stick around and become more permanent, to the point of its permanency today.

The other reason—and I say this with the utmost respect to Arthur Maloney and his staff. History will be very kind to Mr Maloney in terms of ombudsmanship in this province. He took something from nothing and created something very quickly, albeit expensively, but nevertheless his mark will be an everlasting one, in my view. That notwithstanding, the committee very quickly concluded that there had to be a continuing vehicle of the Legislature to quite frankly monitor the Ombudsman: Who watches the watchdog?

Those of you who have perused some of the committee's early reports will see the two themes: The committee will serve as a vehicle to assist the Ombudsman in recommendation-denied cases, and then, secondly, the committee will continue to, on a regular basis, usually annually, examine the organization and the operation of the Ombudsman to determine whether the Ombudsman is effectively, appropriately, fairly fulfilling his or her functions as enumerated under the act.

So from 1977 to about 1980 the committee on a quite regular basis received the annual reports of the Ombudsman, and where they describe the so-called recommendation-denied cases, this committee quite frankly turned each of those into mini-inquiries and the committee heard very completely from the Ombudsman and then his staff to fully understand the circumstances of the investigation, the conclusions reached, the recommendations made and the reasons therefore.



It then heard from the governmental organization and usually the head of that governmental organization to understand why the recommendation could not be implemented or would not be implemented, and then the committee made its decision. Mr Murray informed me this morning that since I've departed there haven't been any recommendation-denied cases considered by this committee, so the statistic probably remains the same. Statistically, this committee supported over 80% of the Ombudsman's recommendation-denied cases.

There arose an impasse, in relative terms, about 1979 between the committee and the Legislature—not terribly serious; more borne by the very heavy schedule of the Legislature than by anything else—when two reports of this committee to the House with recommendations specifically that Ombudsman recommendations be accepted and implemented by governmental organizations, were not debated. This committee sent—and I can't recall which number it was, but it's the one that is bordered in black on the cover with some language in the black that says in effect, "If you, Legislature, don't address this committee's report and recommendations, you will fatally undermine the effectiveness of the Ombudsman's office and, through it, this committee."

To its real credit, the Legislature listened to that admonition and it gave the outstanding reports very full and serious debate. Something happened of historical precedent, in committee, Legislature's parlance, in the House then. The Legislature adopted recommendations of your predecessor, the select committee—the first time it had ever happened in the history of the province, to my knowledge, and I believe that's accurate; and I'm not sure it has ever happened anywhere else in Canada or in any other common-law jurisdiction.

Immediately after those recommendations were adopted by the House, the ministers of the ministries affected by those recommendations said they would implement them without question, without further discussion and without concern. There arose an issue between the committee and the then government and particularly the then Attorney General, Roy McMurtry, as to what the effect of the House adopting this committee's recommendation was. And the two schools of thought, one by Mr McMurtry, were that the adoption was nothing more than a resolution of the House, an expression of the House's opinion or view, and there was the other school, of which I was a member, that said, "When the Legislature by order adopts a recommendation of the committee, it creates an obligation in law."

1020

We never resolved that debate, not surprisingly. When you put two or three lawyers in a room, you get five or six opinions. But as this committee has said in previous reports: "So what? It doesn't make any difference if it has the effect of law or whether it's merely a resolution. Who would be so foolish as to ignore and not implement an act of the Legislature after full debate?"

So, while the question was never resolved, there nevertheless was a significant expression throughout ministries and governmental organizations that once the Legislature

adopts a recommendation of this committee—and just to finish that thought, that is a recommendation of this committee accepting a recommendation made by the Ombudsman to a governmental organization that had been denied.

Once that process concluded, those governmental organizations affected would implement the recommendation. So there is what I consider to be the pinnacle of this committee and, frankly, the Ombudsman's effectiveness in this province. Would it have the attention of all the governmental organizations, of the Legislature and, through the Legislature, of this committee? I don't believe anybody's done an analysis. I believe it was former Mr Justice Morand, who I understand appeared before you last week, but I believe it was during his tenure—I know I have heard this from former members of his staff, but life did get considerably easier back then in terms of dealing with governmental organizations.

When this committee realized what had happened, it took its responsibility very seriously and it stated—again I'm sorry; I'm terrible with numbers; I can't recall which report it was but it said it in at least one report—that because it sees itself as the vehicle of the Legislature in carrying forward these recommendations, it's going to carry out that responsibility very seriously. So, whenever the Ombudsman brings recommendation-denied cases to it, it's going to scrutinize them very thoroughly.

Therefore, Legislature, when we come to you with a recommendation of us supporting the Ombudsman's recommendation, please have comfort that we've done our job. We're not saying to you, "Don't debate it," but you don't have to presume to go into all the detail we did. We stand as your, if you will, agent in providing this immediate assistance to you.

I think, from that point until I stopped assisting the committee, that's how this committee carried on its function. Now, why is that all-important? I'm of the view that an Ombudsman is only as effective as the Ombudsman has an ability to have his or her recommendations implemented. The ultimate sanction, what the scholars call it, is the process whereby an Ombudsman can have a recommendation which a governmental organization refuses to implement implemented.

In my view, an Ombudsman who does not have that ability is not very effective at all. The Ombudsman is—it's trite to say and I hate the phrase, but that's the phrase in the learning—the servant of the Legislature, and that servant relationship is a two-way street. The Ombudsman has responsibilities vis-à-vis the Legislature, but conversely, the Legislature has responsibilities vis-à-vis the Ombudsman. Those responsibilities include, through this committee, a process whereby the Ombudsman can come to the committee to have recommendations brought forward. That's one part of the history.

The other part of the history is the ongoing review of the organization and operation of the Ombudsman's office. I can remember, in the early days, that the first two days of this committee's proceedings were taken at the Ombudsman's office, physically reviewing or seeing things that had gone on, talking to real people and looking at real things and generally getting into how things go on.



I note some comments of the committee in its 19th report respecting some frustration in that respect. Frankly, I identify with your frustration if there has been a resistance on anybody's part to your wish or desire or the fulfilment of your responsibility in that regard, which this Legislature has endorsed many times. I think you should persist in having your wish and your responsibilities fulfilled.

I might say something else. This committee is extraordinarily respected among academics, scholars and others who monitor, if you will, workings of standing committees. One of the reasons is because this committee has been—and I understand, speaking to your Chair earlier, that this remains so—extraordinarily non-partisan in its dealings. That's not to say—by definition this is a political process, but every once in a while when certain issues arise, political views or political points of view or political backgrounds are given secondary consideration to the real issue at hand.

It seems historically that when a complainant comes forward through the Ombudsman and says, "I've been wronged this way and the governmental organization still refuses to either acknowledge that wrong or to assist me," this committee rallies together. As I say, that has been, and I would hope would always be, a very important component part. It's what gives these committee reports historically so much credibility in the House, that your colleagues don't have to be concerned as to what motivates this recommendation or that. I'm not totally naïve; there are a number of historic recommendations that have political content to them. But again, that's part of the process.

I guess the last thing, in a general sense, before I throw it open to your counsel, yourself or any members of the committee, is that I see this committee's role not as another arrow in the Ombudsman's quiver, not as a necessary evil to be resorted to on an annual basis, and I do not see this committee's role to be solely financial. I see this committee's role almost as one of a partnership with the Ombudsman when these recommendations are denied, not in a sense where there's a blind identification with the Ombudsman's position, because you will give and have given Ombudsman's reports a very thorough scrutiny, but in a partnership to bring forward whatever has to be brought forward to the Legislature. So when you report to the House on these recommendation-denied cases, yes, you're reporting with your own voice, but when you support the Ombudsman's recommendation, you're also reporting or speaking on behalf of the Ombudsman. That's what I mean by partnership.

Again, no other jurisdiction has brought the level of ombudsmanship to the effectiveness of this jurisdiction, and the last time I checked, governments were getting bigger, not smaller. It would be a shame if that effectiveness were lost.

One last thing, lest I forget. I alluded to it. I understand there haven't been any recommendation-denied cases. I would put that very high on your priority list of things, to find out why. It may be that this Ombudsman is extraordinarily effective in having her complainants' complaints resolved. It may be that the governmental organizations have looked at the history of the process and said, "We don't

want to get involved with that any more because we'll have to risk an appearance before this committee." It may be a lot of things, but in my view, to fulfil your terms of reference on this specific inquiry I'd want to find out why that is. When you find it out, then you can draw your own conclusions and say whatever you have to say.

Thank you, Mr Chair, for the opening opportunity.

1030

**The Chair:** Thank you very much, Mr Bell. Comments or questions?

**Mr George Mammoliti (Yorkview):** Sir, thank you very much for coming out. I do appreciate it. You've certainly opened up my eyes in terms of some of the questions I've had and you've narrowed down those questions, and I'm not going to ask them.

I am going to ask you this question: If you were the legal counsel at this point for this committee and you received a number of very consistent anonymous letters complaining about the process within the Ombudsman's office and you also received some signed letters complaining about the process within the office very consistent to those that weren't signed, those letters being from either previous employees or employees who are there at this point, what would you recommend to this committee in terms of what we should be doing, remembering that some of the accusations are pretty serious?

**Mr Bell:** I'll try to answer that question without the benefit of the detail of those letters, but let me make two assumptions and I'll give you two answers, which is sometimes what lawyers do, depending on what the substance of the concerns is.

I include former employees and current employees as members of the public. Where the public communicates with this committee and where the substance of those communications raises issues that go fundamentally to the Ombudsman's ability to effectively carry out his or her functions under the act, that's something I would, if I were counsel today to this committee, recommend very strongly to this committee that it inquire into.

Where the substance of the concerns does not go to that level—they're more matters of administration within the office, former or current—then I think out of courtesy I would in some way draw them to the attention of the Ombudsman and leave it to the Ombudsman to address those matters as she might be advised. Again, depending on how serious and how substantive those issues are, this committee may or may not get involved. This committee has been involved in the past in a direct way with communications from the public.

**Mr Mammoliti:** When I talked about a consistent message, this is what I'm talking about: 80% of the Ombudsman's office is unhappy and wanting to leave and looking for other employment. Would you not agree that would warrant this committee to be very interested in the morale at that office and the goings-on in that office and why perhaps there are accusations and the morale is that low? Eighty per cent of an office wanting to leave is pretty serious, in my opinion, and, if that's true, it certainly



would warrant this MPP to be concerned. Would you not agree that's certainly something we—

**Mr Bell:** Again, with a very large preface, if that were true—

**Mr Mammoliti:** But we don't know if it's true. We want to find out if it's true, and I think that's where we have to recognize the input of this committee.

**Mr Bell:** Yes.

**Mr Mammoliti:** Where do we go from here? Perhaps that's another question you might want to answer. Where do we draw the line?

**Mr Bell:** You're close to the fine line because you're close to the line between Ombudsman administration, ie, "How I run my office is my business," and "Other than you or somebody through the legislative process approving or not approving my estimates, leave that to me" and between that side of the line and the other side of the line, which is that, "I can't carry on effectively any more" or, "I'm not able to carry on effectively any more because, for whatever reason, my staff are unable, unwilling or not doing the job." The staff are the personification of the exercise of the Ombudsman's functions. That's why the staff are there: to process the complaints from the public in respect of government maladministration. Sure, I'll give you a tough answer. That's one where I believe this committee has a responsibility to ask more questions.

**Mr Mammoliti:** I agree with you. I think that we should be, under these circumstances. Would you agree that a position like the Ombudsman is perhaps like the manager of a baseball team? If that baseball team is not doing well and the morale is low and there's obviously something wrong within the organization, somebody should be accountable. Do you not agree that perhaps the Ombudsman has got to look at the way the office has been managed? That's a question I'm going to ask consistently over the next few days and it's certainly a question I want to ask the Ombudsman if she comes in front of the committee.

**Mr Bell:** I think a closer analogy might be that an Ombudsman is either a captain of a ship or a general of an army. As Harry Truman once said and now President Bush continues to say, "The buck stops here." Where things aren't going on effectively, there's only one person who can answer that for the Legislature, and that's your servant.

Again, forgive me. I don't know details of the last two and a half years, and maybe you might fill me in on some, but if there is some disagreement as to the Ombudsman's responsibility or obligation to discuss or report or have you deal with matters, I find that somewhat extraordinary in general terms.

It's happened before. There have always been skirmishes between the Ombudsman and this committee. The more proactive and aggressive this committee has become in terms of what the Ombudsman is doing and why, the more skirmishes. That's reasonable and that's understandable, but if there is a view or a position taken in general terms that, "You can't make any inquiries into what's going on in my office," I find that not acceptable and, frankly, historically and legally incorrect.

**The Chair:** Mr McLean, if you promise not to yell at Mr Bell, you can now have your turn.

**Mr Allan K. McLean (Simcoe East):** Thank you, Mr Chairman. I will promise you that because John and I have a long association going back many years on this committee.

I'm pleased to see you here this morning because I think your input is very valuable. The amount of experience you have had with the committee has certainly been tremendous and over the years I've sat on it, many years, I've enjoyed working with you.

Has this committee ever asked you, since it has been formed, to deal with any legal problems with regard to the workings of the Ombudsman's office? Have you ever been requested by the committee to appear before it before?

**Mr Bell:** No, sir. Mr Carrozza's letter to me of 28 July was my first communication with this committee since I stopped working for it.

**Mr McLean:** It's unfortunate. I sat here with Mr Hayes for a couple of years when he was here between 1985 and 1987. The total new membership of the committee, I guess, has created part of the problem, not knowing the knowledge and the background of the operation of this committee when Mr Philip was on it for many years and had a great input into it.

I remember, as well as you do, the Criminal Injuries Compensation Board bringing cases through the Ombudsman to the committee, the case of Mr A or Mr B or Mr C. It was always operated in a non-partisan way. The Ombudsman would make recommendations and come to the committee to find out if we would concur with his recommendations. I think it was an open process and a good process.

To my knowledge, I haven't heard of any cases being brought to this committee through this Ombudsman. Would I be correct in saying that the Ombudsman has never brought a case before this committee, to your knowledge?

1040

**Mr Bell:** As I say, other than my communication with Franco I have no detail or no information respecting what the Ombudsman has done vis-à-vis this committee. I was informed by Mr Murray this morning that there have been no recommendation-denied cases come forward, I guess since 1989, and, to be very blunt, that concerns me. I'd like you to find out the answer. I'd like to find out the answer.

**Mr McLean:** I'd like to find out the answer too.

**Mr Stephen Owens (Scarborough Centre):** I guess some of the points you've touched on this morning strike at the heart of the concerns that I have with respect to tracking exactly what is going on in the office. I think, as MPPs fully accountable to the taxpayers, our constituents, we certainly have to have some method of monitoring, and it's not just because of the dollar issues that are involved. I believe the budget is somewhere in the neighbourhood of \$9 million for the office. But the bigger issue is with respect to justice and to ensure that people are receiving justice in an expeditious manner.

Donald Morand appeared before the committee last week and he took the view, as has been stated before, that



this is a court of last resort for people who have already been turned down. But in the establishment of this final appeal process, there's still no reason for a laissez-faire attitude.

I guess my question is, in your view, how do we get down to tracking the kinds of case handling and case management systems that are in place within the office without interfering in that independence I believe and I think all members believe and agree is important so the current and future ombudsmen are able to do their jobs effectively?

**Mr Bell:** One of the ways you can do it is what the committee used to do. We used to sit in the large boardroom of the Ombudsman's office for a couple of days and we used to talk with the senior staff of the Ombudsman and they used to tell us and in some ways re-create how they did their business. We learned all about the case conferences, we learned all about the—I forget the detail at the time, but we got an insight as to how they did things.

One of the features of this committee reviewing recommendation-denied cases is that again, if you look at previous reports, you'll see that this committee, and I think it's a regulation, listed the documents it wanted—required—from the Ombudsman through the various stages of the investigative complaint process. So you got things like initial memorandum or written complaint, case conference memorandum, 19(3) letter, 22(3) letter, 22(4) letter, and that's a microcosm of the office, because a recommendation-denied case involves every aspect of the Ombudsman's operation, from the initial complaint receipt to the final report recommending. You had a pretty good handle on how things were done and from time to time you'd offer constructive suggestions on how things might be done more effectively.

I can remember, through Don Morand's and Dan Hill's day, that subsection 22(3) reports, the so-called recommendation-denied reports, were darn well written, concise. I know they took a lot of time, and one of the reasons they took a lot of time was because the potential existed for every such report to come to this committee to be scrutinized, and anybody who works or delivers a product of work that is going to be scrutinized in some public way usually spends a good bit of time on the quality of that. You shouldn't take all the credit for the quality of the reports, but that's one of the reasons.

Sorry, I'm preaching the same thing, but if that's gone, you lack—I would request that you have the office put together a brief of documents, and if there's a concern about confidentiality, then block out all the matters that might be considered confidential, but give us a brief of your documents. Let's see how you do business in a paper way. Let's get an insight as to your process.

I note there's the perennial theme of, "It takes too long to process complaints." By the way, this particular tenure is not unique in that regard. That was a concern from the very beginning and I don't know what the numbers are.

I note now that you don't get comparative statistical analysis. Well, how can you do your job to assess whether the operation is more effective this year as compared to last?

I see you don't get the schedule of outstanding recommendation-denied cases, because the view has been expressed by the office, presumably by the Ombudsman, that once a 22(3) report is issued and presumably the Ombudsman exercised her discretion under section 22(4), that's it; there's no more responsibility for follow-up through this committee. Well, other ombudsmen and this committee—most, I believe—hold the view that so long as there is an outstanding 22(3) recommendation, the Ombudsman continues to have involvement, and if this committee has been part of it then that involvement continues.

Those are some of the things, and if there is a concern within the office that somehow some interpretation of the act requires the current Ombudsman to be more concerned about confidentiality matters in the past, then I'd have a good, thorough, heart-to-heart discussion and understand what the problems are. If there are problems, those problems can be overcome, in my view.

Arthur Maloney felt quite restrained by the act because he interpreted that act in about as wide a scope as one can, and you know what the court says. The Supreme Court of Canada says this is social policy legislation, and social policy legislation is to be given a very wide latitude of interpretation. It's a very wide net, and as I say, I don't see the confidentiality concerns in helping this committee to help the Ombudsman. After all, that's all you're about: to try to make the office more effective than it has been and is currently.

**Mr Bill Murdoch (Grey):** As a former employee, do you have any problems with us having this review we're doing right now? Do you think this is a good idea?

**Mr Bell:** No, this review, as you've said in your report, I believe, is long overdue.

**Mr Murdoch:** Okay, I just wanted to get that on the record, because obviously the Ombudsman doesn't feel that way with the report she's put out, a special report sort of towards us on having this review. You've probably seen the report, I'm sure. That's just the one thing I wanted to check.

The other one is that I appreciate the fact that you tell us about how we can work with the Ombudsman if there's a problem that comes to her, and if she has problems with the Legislature adopting her report she comes to this committee and it helps out.

On the other hand, on a denied report—and you sort of touched on it just before I got the chance to ask you—we sometimes will get people who write to us and say, "Why is it taking two years to find out about my problem?" or there have been some concerns. We as a committee then felt that if we should look into that and write a simple letter to the Ombudsman saying, "Here's a case; why is it taking two years?" then we basically can get back that it's not our business. I think from your previous answer you're saying that maybe we could work together on that.

**Mr Bell:** Yes, you can work together. How can we help you to be more effective? But it is certainly within the authority of this committee to conclude that after a certain period of time, the length of time in processing complaints,



the office is not effectively fulfilling its function and therefore become involved in that.

This committee has numerous previous reports where it has said—and I think I have the number right. At one time I think the average time to process a complaint, to whatever conclusion it was, exceeded 365 days. This committee said quite bluntly: “That’s too long. Shorten it.” I think you will find that there was real effort and some success in shortening. But if you’re not even finding out how long it’s taking and then you’re told it’s none of your business to ask—well, I believe it is, and I believe you should exercise all of your authority. As a very minimum you would report back to the Legislature and say: “We seem to be having difficulty getting the following cooperation. Please help us.” I would think that your colleagues in the House would help you.

1050

**Mr David Ramsay (Timiskaming):** Mr Bell, thanks very much for coming before us today. I found your brief very refreshing and very informative. You seem to have a very firm grasp, it seems to me, as to the balance that needs to be struck between the sense of the independence of decision-making of the office and the accountability that the office has as a servant to the Legislature—to us, the standing committee, and the Legislature which we represent.

I would ask you: What recommendations would you have as to changes in the legislation to maybe clarify the accountability that the office has to the Legislature? As you’ve heard from the series of questions that have been asked of you today, we are having some difficulty not only in trying to strike that balance ourselves but in getting that cooperation from the office today. What recommendations would you have, as we are looking at the act, that might spell this out more explicitly?

**Mr Bell:** One of the questions in the list of questions that your counsel prepared under this committee’s operations is, has this committee fulfilled its responsibilities sufficiently in the area of enacting recommendations, or enacting regulations, for the guidance of the Ombudsman in the exercise of her function.

As you know, again, this committee is the only committee of any that I’ve ever heard of that has the ability to recommend regulations to the Legislature for the assistance of the Ombudsman in the exercise of her functions, and if those recommendations drafted as regulations are adopted, they automatically become regulations. This, by the way, is the strongest example I can give for the conclusion I have that once the House adopts your recommendation, it becomes law. That’s extraordinary. No other vehicle of the Legislature has it.

I answered the question, when I was reviewing the material, that yes, that’s one of the areas where this committee probably has not done what it should have. But there’s a very good reason, because going back even as early as 1978, this committee and Arthur Maloney thought there was going to be a bill amending the Ombudsman Act and that all of these problems like confidentiality, secrecy and all of the other things would be addressed in legislation, so “We’ll defer our regulation power in favour of a

bill.” Well, that’s 14 years ago, and there are probably no current plans to table again Bill 80 or any successor.

I would suggest that this committee might look very hard at dusting off that regulation power, take an inventory of areas of concern, and say to the Legislature as well as to the Ombudsman: “Okay, these are the things we think need to be done on an immediate basis to make the office more effective and to assist you. Here they are. If, as and when there’s a bill amending the act, then we’ll see about a sunset clause.”

In specific terms, if it needs to be done—and it sounds like it does—I think this committee could and should draft something in those regulations clarifying what the Ombudsman’s responsibilities are in reporting to the Legislature and what matters the report should contain. It would seem to me that certainly comes within the heading of matters that will assist the Ombudsman in the exercise of her functions. This is one area where the collaborative approach needs to be undertaken.

I think you need to hear from this Ombudsman as to what are the very difficult items or matters of omission in the current legislation that require correction, the secrecy issue being one. That’s probably one you can’t do anything with by regulation. You’d probably have to have a substantive amendment to the act, if it’s needed.

I don’t know what the current Ombudsman’s position is, but I know predecessors have expressed frustration that they can’t disclose enough. When they get a complaint in, they’d like to have some ability in appropriate circumstances to make public the fact of the complaint and the investigation, much like the Ontario Human Rights Commission does. I think if there was a sufficient description of public interest in the legislation, I would be more than comfortable in giving the Ombudsman that discretion. The other matters, I think, could come from a good, thorough discussion with the Ombudsman.

I don’t have a lot of problems with the current legislation. When you break it down, it’s a pretty effective tool. There are very few—even new institutions like the Information and Privacy Commissioner, which comes to mind. He’s got the power of inquiry under the act and he has one more piece of equipment than the Ombudsman. The privacy commissioner can issue an order which will require some compliance, but the Ombudsman has the same inquiry power. He can hold a hearing under oath, examine witnesses under oath and require the production of documents. It’s a very effective tool.

**Mr Ramsay:** Pursuant to your recommendation that we should be dusting off our regulatory power, especially in regard to reporting to us by the Ombudsman, do you have any specific recommendations as to what her role should be once the office has submitted its annual report to the Legislature and has been referred to the standing committee?

**Mr Bell:** Yes, to assist and confer with this committee while this committee fulfils its obligations in examining the report. I’ll be more specific. When you do get a recommendation-denied case, the Ombudsman, in my view, should be continuously present before this committee to

assist this committee in any way appropriate in terms of the committee's deliberations. I view the Ombudsman's role, when a recommendation-denied case comes to you, to be the advocate for that recommendation, not a member of staff.

There has been some dialogue between this committee and former ombudsmen that when these recommendation-denied cases were deliberated by the committee, it was a member of the Ombudsman's staff, usually a member of the investigative staff, who was the direct spokesperson on behalf of the Ombudsman.

Now, that person certainly has a role to perform in this committee's deliberations. But in my view, the person who made the recommendation, presumably the person who actually exercised the discretion to formulate that recommendation, should be there, if you will, selling that recommendation to you. My view is that this committee deals with recommendation-denied cases differently when the Ombudsman is there on a continuous basis than when members of staff are there.

In perhaps that precise language, that's what I'd be saying, and I'd go further. When this committee makes recommendations to the House that are adopted, until those recommendations are implemented the Ombudsman has a continuing role to see or to monitor. If they're not implemented, then the Ombudsman should come back to this committee and say so and why not. There have been examples where those have happened and this committee has called in the head of the governmental organization with the Ombudsman and said, "Hey, what's wrong?" And, you know, funny things happen. Even before the attendance the wheels are in motion to implement. That's pretty important, I think.

1100

**Mr David Winninger (London South):** Is there anything inherent in the Office of the Ombudsman that would render it subject to less public scrutiny than would be the case with the privacy commissioner you mentioned or the Conflict of Interest Commissioner or the Provincial Auditor, just to name a few examples? Would their appearance before the committee, subject to a review, be a compromise of their independence in the same way the Ombudsman claims her attendance would be?

**Mr Bell:** No. Let me put a caution on that. If that is her position, I think I can understand it, and there is a legitimate concern. If that is it in this hypothetical, there is a legitimate concern that if this committee becomes too involved in the operation of the office, then it turns into the former West German committee, which was a 19-member committee that in fact was the Ombudsman. So the old saying is, "If you're going to do it, then I might as well step aside and let you carry out the role." As I say, that's a legitimate concern.

But you're not here, and you're not motivated by a desire, to perform Ombudsman functions. You're motivated by a desire to assist the Ombudsman to become as effective as possible. So the short answer is no. Historically when ombudsmen have come to this committee saying, "You know, I just can't get this done. This is what's

happening"—there used to be lots of those involving the Workers' Compensation Board: "They won't answer my letters, they won't do this, they won't do that." We'd have nice chats and, lo and behold, all of a sudden things got easier.

I don't see that compromising anything. I just see that as a further development of a collaborative relationship which I've defined somewhat as a partnership when things go to the House.

**The Chair:** Mr Bell, just before we go to the next questioner, you were involved in Farm Q, and I should inform you that that has been resolved by this committee.

**Mr Bell:** My goodness. I saw that it was referenced in your report. That's the pig case, isn't it?

**Mr McLean:** Yes, that was an interesting case. I was glad to see it resolved.

Mr Bell, have you had any meetings at all with the present Ombudsman?

**Mr Bell:** Shortly after she was appointed I was invited to speak to a group of her senior staff. I think they were the investigative people, together with the legal staff and herself. I think the subject matter was the standing committee: What was its role and how did I see the Ombudsman and the office relating to the committee? I spent about an hour and a half or two hours with them, but no, I've not had. After I stopped serving with this committee I wouldn't have seen any reason for her to communicate with me.

**Mr McLean:** So you had one communication. That would be shortly after she was appointed.

**Mr Bell:** Yes.

**Mr McLean:** Would that be with the existing staff who had been there at the time?

**Mr Bell:** I can't say if it's existing staff. It was the then existing staff. I do know that certain senior people who were there then are not there now. Linda Bohnen, for example, Michael Zacks and Gail Morrison were at that session and they're no longer with the office. They've gone on to other things. Linda Bohnen, by the way, is a lawyer with my firm now and doing very well.

**Mr McLean:** The meeting you had then was approximately an hour and a half, and you at that time gave them the insight of the workings of this committee, much the same as you have done here this morning.

**Mr Bell:** Not as pointed as today, no. It was more of an overview, sort of a historic reference: Where did the committee come from, what is it about, how can the committee work effectively with the Ombudsman?—in that tone.

**Mr McLean:** At that time would it appear to you that the Ombudsman was not fully aware of the operations of the committee?

**Mr Bell:** I couldn't conclude that. I would have thought the opposite, that the Ombudsman's invitation to me to come and speak about it was, I guess, one, born of a need to know and, two, after that, if I had done my job effectively, presumably I would have imparted some information to her, yes.



**Mr McLean:** Did you give her some information about the types of hearings that we held in the committee?

**Mr Bell:** I believe so, yes.

**Mr McLean:** I guess what concerns me is the fact that I've seen a lot in this committee in the last few weeks; I've seen a fair bit in the papers. From what I observe, there's a communication problem between the committee and the Ombudsman. I probably could fault the committee for not having you here a lot earlier, like 18 months ago, to perhaps fill it in on the workings in past years, how it's been done. I would make the observation that I think the committee should be looking at you as a guide to help solve this problem of the communication gap between it and the Ombudsman, if that's at all possible. It's an observation I wanted to make because of the background you have. The way I've seen this committee operating, there certainly is a need for communication, and I believe you'd be the logical one to do it.

**Mr Bell:** Thank you.

**Mr Alvin Curling (Scarborough North):** Mr Bell, I'm not a lawyer, but I sometimes wish I were.

**Mr Bell:** I tell my kids, don't.

**Mr Curling:** The fact is they do speak a different language and I'm lost at times. Therefore, just as a politician, I'm trying to understand the law so that I can be an Ombudsman to the people who come into my constituency to express to them the services that are available.

I often wonder in this process whether the Legislature is the supreme power of the system, that the Legislature has a greater power than the Ombudsman, so to speak.

**Mr Bell:** Undoubtedly. By the Legislative Assembly Act, whenever the courts have come to comment on it, the Legislature has supreme authority vis-à-vis enacting legislation through the executive branch and then the legislative branch, but also, exercising certain functions under the Legislative Assembly Act, the Legislature is the highest court in the province. There's no contest between the superiority-subordination of the Legislature and the Ombudsman. It says right in the Ombudsman Act that the Ombudsman is—I believe the language is “a servant of the assembly.” If that's not the language, that's the effect. It is also a mandatory requirement that the Ombudsman report minimally on an annual basis to the Legislature in respect of the activities of her office in that year; plain and simple.

**Mr Curling:** I think this committee went about defining that in many ways. One way was to have the Ombudsman in here to ask about whom she reports to, because all this started with the fact that we had an annual report and we wanted to know what to do with it. It is said that this committee must review the annual report, and we said, “What are we going to do with it afterwards?” We tried, through the Ombudsman, to know what we could do with it. I presume she more or less said we could read it and then submit it to the Speaker.

We brought the Speaker in here and I asked him the same question. I'm not quite sure whether I got an answer from him about what it is we do, but as you have said that

too and established that, I thought I understood that the Legislature is the supreme power here.

Would statements like, “We cannot be subjected to opening ourselves up to the political inference of the Legislature,” which was stated by the Ombudsman, reflect to you a lack of understanding of the process by the Ombudsman?

**Mr Bell:** If this or any other Ombudsman objects to appearing and participating with this committee because of fear of infection of the political points of view and the political process, that would demonstrate a lack of appreciation as to what this committee is all about. I mentioned the non-partisan way in which this committee has dealt, and I would believe there to be a lack of appreciation.

More fundamentally, there seems to be a lack of confidence on the part of you members that you'll fulfil that responsibility in a non-partisan way. I've got a simple answer for that. Why doesn't somebody give you a chance?

1110

**Mr Curling:** I'm not all that excited about the fact that we are all together on this issue. I'm being realistic. If the opposition were taking this strategy, and those people over there who are the government had taken a different decision, you and I know it wouldn't go.

**Mr Bell:** Exactly.

**Mr Curling:** They'd just gang up on us with their six and get the four here, and they would have won. But they're embracing all of this, so I don't have a partisan shot—

Interjections.

**The Chair:** Order.

**Mr Curling:** I'm not excited; I think it's on the issue that we go. Do you see what I mean? As soon as I say I'm not quite excited about the comradeship here, that goes on. It's the issue I'm more interested in. I'm more interested in the people who present a case, not that the government is on side or that we are on side.

You have established the fact that the Legislature is supreme. Again, I'm very mindful that the NDP has the majority in the House, and whenever it comes to a vote, it will go that way. But to raise the issue and make sure it's known and that we're on the right track is why your coming forward now and answering these questions is extremely helpful.

The question I want to ask, although I went around it another way, is that the Ombudsman is appointed for 10 years. That's a long time to appoint anyone. As she said in her statement: “I submit my office to the auditors and to public accounts and I submit my annual report to the committee here. If they want to fire me, they can.” Now, it's my view that 10 years is a long time. Do you feel it's quite a long time to appoint someone, that if things are not going well, we could change it? Should we be looking at maybe a five-year appointment?

**Mr Bell:** I guess it's like everything else. One year is a long time if things aren't working out. If things are working out marvellously, 10 years might not be long enough. I don't get terribly excited about what the length of time is;



I'm more concerned with how things are working out. If they're not working out—hopefully you're not anywhere close to that.

Mr Chair, if you'll permit me, this is a political process by definition, Mr Curling. I am excited by what goes on here, because as I said, over 80% of the things this committee has dealt with, it has dealt with in a non-partisan way. The other 20% are the exchanges that happen from time to time. The decisions that are made by the majority of the committee, for whatever reason, I find sometimes refreshing and frankly giving more credibility to the process. Anyway, forgive that aside.

Mr Chair, might it be an appropriate time—you've asked me some specific questions through your clerk. If I haven't covered them, would it assist if I embellished on some of these questions, just to make sure the record was complete?

**The Chair:** I would say that would be fine, but it is up to the whim of the committee. Is that agreeable by all three parties?

**Mr Anthony Perruzza (Downsview):** Mr Chair, I have a very brief question I'd like to put to the former counsel.

**Mr Mammoliti:** Perhaps it would be wise, Mr Chairman, to finish off any questions the committee would have and then—

**Mr Murdoch:** That's fine.

**The Chair:** Mr Curling, are you done?

**Mr Ramsay:** I hope so.

**Mr Murdoch:** Yes, he's done.

**Mr Curling:** My colleagues on both sides seem to be saying they hope so. I'm just being selfish in my quest of a better understanding, and you have covered it. I'm sure, as you embellish those questions that are for you, you'll satisfy me even more.

**The Chair:** Thank you very much, Mr Curling, for that thoughtful question.

**Mr Mammoliti:** Unlike Mr Curling, I'm actually proud of what this committee has done over the last two years. I think the fact that we are unbiased speaks for itself and I think the relationship we've experienced with this committee is one to be proud of. I'm proud of what we're doing. I'm not about to take any shots at Alvin. I've always said he sings like a bird, and I like hearing him.

Just one quick question, if you don't mind answering: One thing that really puzzles me and frustrates me to a degree is the perception the public has of the Ombudsman's office. The Ombudsman's office is supposed to be the last resort for the public in terms of any complaints they have with ministries, yet the perception of a lot of people out there is that the Ombudsman's office is an office that protects the government. Would you agree that this is one of the perceptions out there? Whether you do or you don't agree with that, I'd like you to tell us as a committee what we could do to stop that perception, because I know that's not true. I know the Ombudsman's office is certainly independent, that when it's time to criticize, it certainly does, and when it's time to rule, it

certainly does. What can we do as a committee to stop that perception, if that exists?

**Mr Bell:** First of all, I'm unable to confirm that it is a perception, just because I lack the information. It's certainly not the perception of those I associate with or with whom I have discussions about the Ombudsman, but that's probably because those people have substantial insights as to how the operation is carried on.

If that is a perception within the public—and it wouldn't surprise me if it is, because the public very often doesn't differentiate. If it's funded by public money, if it's funded by the Legislature, it's an arm of the government and people will not bother to make that distinction. If it is, then this committee should look very carefully and seriously at how to assist the Ombudsman in getting the message out that it's an independent function.

Speaking from the workings of this committee, to the extent that this committee's operations become known to the public, one of the ways is to encourage the Ombudsman to give you some recommendation-denied cases. I don't mean that you tell the Ombudsman, "I want you to decide things in a different way," but if there's a reticence or a reluctance to come forward, I think you need to find out about that and do whatever is necessary to eliminate that reluctance etc and to encourage the process to continue as it did.

**Mr Perruzza:** I have a couple of questions, and I'll try to keep them very brief.

The other day I read the act and I too ran into the 10-year appointment clause, and I found that to be rather unusual. In my experience—and I've sat on two other publicly elected bodies, on a school board and on a municipal council—appointments generally range anywhere from two to five years. Rarely do you see them exceeding that range of years. They quite often mirror the life of governments or of elections themselves.

Also, speaking hypothetically now, I'd like to get your opinion on two elements of the act. There's a clause in the act that allows the Legislature to remove an Ombudsman from office with cause. What does "cause" mean to you? What would constitute cause?

**Mr Bell:** I think "cause" would have a broad definition. If you want to stay within the language of the legislation, one of the causes, it would seem to me, would be evidence that the Ombudsman is, for whatever reason, not carrying out the functions required of the Ombudsman under the act. Go to an extreme: If the Ombudsman just were no longer exercising discretion to investigate, to do a 19(3) or to do a 22(3) where there were circumstances that any reasonable assessment would conclude that discretion ought to be exercised, that perhaps is one. If an Ombudsman became, for whatever reason, physically or otherwise unable to do the job of Ombudsman, that is a cause.

1120

But "for cause" is a legal term of art. There are many legal reasons for dismissing somebody for cause, and I would expect that if there were ever consideration of that list, you'd revert—or whoever—to the usual common law



definitions. I don't believe there's any special definition in the act.

By the way, that's to be compared with some legislation in some jurisdictions wherein I believe the Ombudsman is appointed at the pleasure of the Legislature. The reciprocal of that, of course, is that when it's no longer the pleasure of the Legislature that can be terminated.

To say one thing for length of tenure, though, length of tenure is generally considered by ombudsmen to be equivalent to independence. You can't tie the position of Ombudsman to an election or to the length of a particular government, because that ties it to government and that would seriously erode the independence.

So I believe you should have a fairly lengthy tenure, but you should have some built-in means—as probably already exist—if circumstances are appropriate, to examine that tenure. But as I said before, if things are working out well, who cares?

**Mr Perruzza:** I understand what you're saying. Maybe to expand the point a little, am I to understand that "cause" could mean that if you're requested by the committee to appear before it and you consistently refuse to appear before it, and in your opinion that essentially is part and parcel of any Ombudsman's list of duties, would that in itself be cause?

**Mr Bell:** No. You'd have to examine all the circumstances: What was the reason for the request? What was the reason for the refusal etc?

I think this committee would also want to examine, perhaps with the Office of the Speaker or Mr Murray's office—this committee, by its terms of reference, has some pretty significant powers to call for persons, places and things to come before it. Plus—it's not often used and we all would hope and pray that it would never be used in the context of an Ombudsman—this committee can always call for the issuance of a Speaker's warrant. Then, if people refuse a Speaker's warrant, there are certain consequences of that which flow through the Legislative Assembly Act to the Legislature.

If you got to the point where you could only get the Ombudsman to appear before you by the issuance of a Speaker's warrant, then the relationship would have been so fundamentally destroyed that I think you'd be looking at different things to do. This may be totally inappropriate. I hope you're not or would not ever be in that context, but it's available.

The committee came close once. Mr Maloney walked out of this committee once when the committee commenced an examination and inquiry into a matter that a member of his staff had brought to the committee's attention. Mr Maloney adopted the view that it was a matter of administration and, "It's my business and not your committee." The late Jim Renwick was Chair of the committee at that time. Mr Maloney made his position known. The committee listened intently and then decided to proceed to examine into the matter. Mr Maloney and his staff got up and left. I believe it's the second or third report: This committee had some very eloquent things to say about that and

the language was quite blunt. You might want to have reference to that as a guide.

Mr Curling is right. I do get excited when I talk about this committee because it really has done some wonderful things. There's not a lot of reinvention of the wheel that's necessary; you just go back and take a lesson from history. As I say—and it was adopted by the Legislature, by the way—the committee said very specific things. The bottom line was, "Don't do it again or you'll put this committee in a position where it may have to consider more drastic legislation." It didn't happen again.

**Mr Perruzza:** There's a last thing I'd like to clear up. Again I'm asking your opinion, because I read the act and I'd like a few points cleared up for me. If this committee were to recommend, for example, changing the length of appointment of the Ombudsman from 10 years to five or to three, and did that in midterm of an appointment, what are the repercussions of that kind of move?

**Mr Bell:** I don't know if that's a question you want to ask in public. You might want to take some legal advice in another way. There's a saying that the Legislature can do whatever the Legislature feels compelled to do. I would have some concerns that any subsequent legislation affected the 10-year relationship. I don't think I should say anything more than that. In fact, I'm not going to say anything more than that unless you compel me.

**Mr Mammoliti:** Or pay you.

**Mr Bell:** Well.

**Mr Perruzza:** I want to respond very quickly to a point that was made by my honourable Liberal friend Mr Curling. I've sat in the House now for almost two years, and quite frankly, of all the bills that have gone through the House, the Liberal Party has voted against very few. More often than not, they've supported the programs and legislation that we put through the House, so we often see eye to eye. When push comes to shove and you have to put the hammer down, that happens, but I think that more often than not we get carried away and try to make a show of the proceedings of the Legislature. I'm one who doesn't believe in making a show, and sometimes we get carried away with that. But we agree very often, and this is another one of those issues where we see eye to eye. So we're not that far apart, Mr Curling.

**Mr Curling:** Oh, I am glad to hear that.

**The Acting Chair (Mr David Ramsay):** Thank you very much, Mr Perruzza. Committee, as you heard earlier, Mr Bell has graciously offered to run through the questions that we had submitted to him through our legal counsel that we would like some advice on. Mr Bell, I'll give the floor to you to do that, and thank you very much for this.

**Mr Bell:** One of the questions Mr Carrozza asked me to give some thought to is, what is required to ensure that the Ombudsman is both independent and publicly accountable? We've touched upon a lot of that already. Let me deal with the last part of it. The public accountability is the reporting function required of the Ombudsman to the Legislature and, through the Legislature, to this committee. In

my view, any Ombudsman should be ready, willing and able at any time to engage with this committee in a consideration of any aspect of his or her office with respect to the accountability issue. After all, if nobody's watching the watchdog, there is, at least in perception terms, a concern.

As for the independence, the act is already very specific: Notwithstanding that the Ombudsman is a servant of the Legislature and accountable and reportable to the Legislature, it is an independent. What does that mean? It means the political process not in a direct way engage or interfere with the operation of the Ombudsman's office and the exercise of those functions. I would give a very serious listen to every time the Ombudsman expressed a concern that her or his independence was being threatened and do what you can to assist, but that doesn't prevent a genuine difference of view occurring from time to time between this committee or the Legislature and the Ombudsman.

1130

I hold the view that the Ombudsman is generally held out by those who are familiar with the operation to be quite independent. I think it's perceived by that part of the public to be even more independent than the Human Rights Commission, for example, or, because it is new, even the Information and Privacy Commissioner etc. Other than that, I'm not specifically aware that you need to do anything more than you've already done before, and that is to give full and effective support to what the Ombudsman does when matters are brought before you.

The next question that was asked was, should this standing committee play a role in the appointment of the Ombudsman? Absolutely. I believe that an Ombudsman should be appointed by the Legislature, as is the case now in the act, but I believe it should be with the advice of this committee or after giving full consideration to a recommendation of this committee. I don't like to adopt a lot of things that happen south of the border in their committee system, either in the House or the Senate. But as to the appointment hearings that occur from time to time with the judiciary and with other senior executive branch members, I don't see anything wrong with that from time to time. Again, I think the watchdog, before an appointment, should welcome some kind of dialogue with an arm of the Legislature.

The next question—again, this one's been hanging around since 1975—is, what is the proper scope of the Ombudsman's oath of secrecy? Without giving that full definition, let me say I agree probably with this Ombudsman and with her predecessors who complained that the oath of secrecy is too confined. I believe the only qualification to that oath of secrecy is in a report; in other words, the Ombudsman can disclose that which she considers to be necessary for the purpose of preparing and submitting the report. By the way, that is one of the vehicles through which this committee gets access to documentation, beyond your powers to require things to be provided to you.

I would be in favour of an amendment that permitted the Ombudsman, in appropriate, defined circumstances

perhaps, to go beyond that. I don't see anything wrong, if it's exercised properly, with an Ombudsman saying or issuing a press release, for example, that a complaint had been received regarding X and that she was going to investigate X. I would be concerned if there were disclosures during the course of the investigation leading up to a 22(3) report. I think that's when the system probably has to shut down.

After the 22(3) report, after there is a response received from the governmental organization, that's the time when the Ombudsman decides whether to include it in a report to the Legislature or not. If that decision is in the affirmative, ie, it's going to the Legislature, I don't have a problem with a concurrent discretion to make that fact public, rather than wait for the actual printing and tabling of the report. The background is continuing and increasing openness in government, and I don't have a problem with that.

The last question I've probably answered, and that is, what should the role of the Ombudsman be once a report has been submitted to the Legislature and referred to the standing committee? I believe the Ombudsman has a continuing active and positive role to play until the time the recommendation is either implemented by the governmental organization or this committee or the Legislature decides not to support it. That's the end of the road. The other end is when it's done.

In respect of the other responsibilities—I've touched upon them—the other aspects of an Ombudsman report, ie, organization and operation of the office, again the Ombudsman should play a continuing and active role of assisting the committee in examining into that which the committee considers and the Legislature considers it has the responsibility to do.

Beyond that, I have some other things to say with respect to some of the questions your counsel has prepared, but for the convenience of the committee, unless members have some other specific matters they want to ask of me, it may be more effective if Mr Murray and I worked out a dialogue. I could provide him with some input at a later time, before the committee has to write its report.

**The Acting Chair:** That's a generous offer. Would the committee concur with that offer? Thank you, Mr Bell. I want to thank you very much on behalf of the committee for your very insightful and thoughtful presentation. I believe, speaking for the committee, we all gained from your presentation today. I want to thank you and wish you well.

**Mr Bell:** Thank you very much. The committee should feel free, at any time, if it wants to use me as a resource or otherwise as a source of information, I'd be pleased to assist the committee. Good luck in what you have before you.

**The Acting Chair:** Thank you very much.

I'd like to inform the committee that because of the cancellation of our presenter this afternoon, we will be adjourned to 10 am tomorrow morning. The committee's adjourned.

The committee adjourned at 1137.









## CONTENTS

Tuesday 25 August 1992

<b>Review of Office of the Ombudsman</b> . . . . .	B-63
John P. Bell . . . . .	B-63

### STANDING COMMITTEE ON THE OMBUDSMAN

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- \***Vice-Chair / Vice-Présidente:** Haeck, Christel (St Catharines-Brock ND)
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Drainville, Dennis (Victoria-Haliburton ND)
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Miclash, Frank (Kenora L)  
Murdoch, Bill (Grey PC)
- \*Perruzza, Anthony (Downsview ND)
- \*Ramsay, David (Timiskaming L)  
Witmer, Elizabeth (Waterloo North/-Nord PC)

#### **Substitutions / Membres remplaçants:**

- \*Curling, Alvin (Scarborough North/-Nord L) for Mr Miclash
- \*Jackson, Cameron (Burlington South/-Sud PC) for Mr Murdoch
- \*Kwinter, Monte (Wilson Heights L) for Mr Henderson
- \*Mammoliti, George (Yorkview ND) for Mr Drainville
- \*Wilson, Jim (Simcoe West/-Ouest PC) for Mrs Witmer

#### **\*In attendance / présents:**

**Clerk / Greffier:** Carrozza, Franco

**Staff / Personnel:** Murray, Paul, committee counsel and research officer, Legislative Research Service

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B-6

B-6

ISSN 1180-4300

## Legislative Assembly of Ontario

Second session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 26 August 1992

### Standing committee on the Ombudsman

Review of Office  
of the Ombudsman

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Mercredi 26 août 1992

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Examen du Bureau  
de l'ombudsman



Chair: Mark Morrow  
Clerk: Franco Carrozza

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Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



### **Table of Contents**

Table of Contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

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La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 26 August 1992

The committee met at 1016 in room 151.

### REVIEW OF OFFICE OF THE OMBUDSMAN

**The Chair (Mr Mark Morrow):** I would like to call this committee to order, please. Good morning. I'm Mark Morrow. I'm Chairman of the standing committee on the Ombudsman. We're dealing with the review of the Office of the Ombudsman, as a motion was passed in the House, July 23, 1992, allowing us to do so.

### ONTARIO SEPARATE SCHOOL TRUSTEES' ASSOCIATION

**The Chair:** This morning we have appearing before us the Ontario Separate School Trustees' Association. Good morning and welcome. You have this morning to give us your presentation. I would ask that you, hopefully, leave us some time for questions and comments. Begin when you're ready, when you feel comfortable, and when you begin, could you please read your name into the record for us. Thank you very much.

**Ms Mary Hendriks:** Good morning. My name is Mary Hendriks. I'm the president of the Ontario Separate School Trustees' Association. In my leisure hours, I think I still live in Grimsby, in the riding of Lincoln.

**Mr Patrick Slack:** Only a little bit.

**Ms Hendriks:** Only a little bit. With me this morning is our executive director, Patrick Slack. With your permission, I would first like to give a few opening remarks and then get into our brief, which I believe is in front of you this morning as well.

**The Chair:** Please do.

**Ms Hendriks:** The Ontario Separate School Trustees' Association represents 54 Catholic school boards in Ontario which in turn provide separate school educational services to more than 575,000 Ontario students. We appreciate the invitation and opportunity to make this presentation to the committee this morning.

Your letter of invitation indicated that the Ombudsman discussed the possibility that complaints concerning the actions and decisions of school boards should be included within his or her jurisdiction. Our comments this morning therefore will address the issue of school boards as they would relate to the role of the Ombudsman.

Our brief is an examination of the conceptual reasons for the Office of the Ombudsman, an office instituted, at least in part, to permit a review of bureaucratic and similar decisions which are not in a practical or effective manner under the review or control of some authority in either the political or judicial sense.

In contrast, currently there do exist practical and effective contact and influence by the electorate over the activities of the trustees. OSSTA believes that this practical and effective influence over trustees does permit the electorate

to exercise control over the bureaucratic decisions of separate school boards. Our brief points out the many areas and ways in which this control is exercised and concludes that an extension of the role of the Ombudsman into the activities of trustees is therefore unnecessary and redundant.

If I may turn to the brief, we begin by pointing out the conceptual reasons for the Office of the Ombudsman.

There is no body having the authority to review the actions of members of the Legislative Assembly except as part of the provincial election process where the electors must choose between candidates for office on the complete range of current issues, not merely the exercise of arbitrary or other unacceptable representational activity.

In part because of employment protection afforded to the provincial civil service, there are practical and statutory limits upon the control that may be exercised by the members of the Legislative Assembly to review the actions of the civil service in its exercise of authority that may be either arbitrary or otherwise unacceptable. The Office of the Ombudsman was constituted, at least in part, to permit a review of bureaucratic and similar decisions that are otherwise incapable of practical and effective review or control in either the political or judicial sense.

In comparison to other levels of government, school boards do have a relatively intimate nature of contact. At the school board level there is significantly more contact and influence by the electorate over the activities of the trustee-politicians than is the case at the provincial level. At the school board level, this greater contact and influence over the activities of the trustee-politicians permits the electorate to have greater control over the exercise of bureaucratic decision-making.

Comparative frequency of contact between politicians and electorate: We try to point out references to the various sections of the Education Act in this particular section.

Under section 208 of the Education Act, school boards are obligated to hold a meeting in December in each year. Under section 208 of the Education Act, school boards are permitted to hold other meetings at such time and place as the boards consider expedient.

In actual practice, school boards hold regular monthly board meetings, and often more, and, in addition, regular monthly committee meetings, again often more than monthly. Each of these meetings, again in actual practice, is advertised to a greater or lesser extent, depending upon the community in which the board operates, either by announcements to the local ratepayer groups by the individual trustees, by statements or paid advertisements in the local media, by notices published through the schools operated by the board and often, in the case of separate school boards, by notices published in local church bulletins.



Having been invited to attend these public meetings, members of the public are generally, almost universally, invited to make representation to the boards, thereby participating in many, if not most, decisions made by boards. Persons who have objected to a decision made by the trustees or by an employee of the board are thus afforded the opportunity to attempt to, and frequently do, reverse decisions made by the trustees or employees of the boards. The most recent example of this would be the recently published decision of the East York Board of Education.

Regarding the legal considerations, access rights mandated by the existing statutory provisions, we have broken these down into broad rights and specific rights.

Under section 207 of the Education Act, school boards are obligated to hold their board meetings in public and no one may be excluded except for improper conduct. Under section 207 of the Education Act again, school boards are only permitted to exclude the public from committee meetings, not board meetings, when the subject matter before the meeting falls within the narrow exceptions of security of property, disclosure of personal information, acquisition or disposal of property, labour negotiations and litigation.

Under section 123 of the Education Act and section 52 for public elementary and secondary schools, parents have a legal right to visit schools their children attend.

Under either the Education Act or the Municipal Freedom of Information and Protection of Privacy Act, school boards are obliged to give public access on request to their records that are not records containing personal information.

In the area regarding specific rights, under subsection 8(3) of the Education Act, the Minister of Education is required to, and in practice does, ensure that all exceptional children in Ontario have appropriate special education programs available to them.

Under section 10 of the Education Act, the Minister of Education has extremely broad powers of investigation into any educational matter in Ontario and may refer any matter to the courts for opinion and decision.

Under section 23 of the Education Act, the parent of a pupil or the pupil, if an adult, may appeal the suspension of the pupil by the principal. Under section 23 of the Education Act, a pupil may be expelled by a board only after a hearing held on notice to the parent of the pupil.

Under section 24 of the Education Act, the parent whose belief that his or her child is excused from compulsory attendance from school is challenged has a right to a hearing into the alleged excuse.

Under section 35 of the Education Act, a parent has a right to participate in a hearing, conducted by a special committee composed of educators and a physician, into whether a pupil is unable to profit by instruction by reason of a mental or mental and other handicaps, to make representations to the board which considers the report of such committee and to make representations to the special education tribunal if the parent brings an appeal to that body.

Under the combined effect of Ontario regulation 554/81 and section 37 of the Education Act, the parent of an exceptional pupil, who does or may require a special education program, has four opportunities to appeal the

initial decision of the identification, placement and review committee related to the pupil's proposed program.

They may request the IPRC to reconsider its recommendations; appeal to the school board from the IPRC recommendation, which board must then appoint an appeal board that must include a parents' group representative; appear before and make representations to the school board when the recommendation of the appeal board is to be considered, and appeal the decision of the school board to a provincially appointed special education tribunal.

Under section 43 of the Education Act, an applicant for admission to a secondary school who is denied admission by the principal may appeal the denial to the board.

Under section 265 of the Education Act, where the principal refuses to admit to the school or classroom a person whose presence in the school would, in the principal's judgement, be detrimental to the physical or mental wellbeing of the pupils, the person may appeal to the board.

Under section 266 of the Education Act, the parent or the pupil if an adult has the absolute right of access to pupil records.

Under section 266 of the Education Act, the parent, or the pupil if an adult, has the absolute right, even as against the usual court processes, to control who, apart from the educators who require access for educational reasons, may examine pupil records.

Under section 266 of the Education Act, the parent, or pupil if an adult, has the right to require the principal to correct inaccuracies in or alter pupil records that are not conducive to the improvement of instruction of the pupil. In the case of refusal to correct or alter, the parent or pupil has the right of appeal to the appropriate supervisory officer or to a provincial appointee who is required to hold a hearing before making a decision.

Under section 270 of the Education Act, a teacher has a right to a hearing before a board of reference in the event that the board terminates his or her teaching contract.

Hearings governed by the Statutory Powers Procedure Act: Since much of the foregoing decision-making is required to take place at a hearing, the proceedings are governed generally by the Statutory Powers Procedure Act, thus ensuring a minimum standard of procedural fairness.

There is also availability of judicial review in decision-making. Persons who are parties to such proceedings who believe that they have been adversely affected by the decisions of the board have the right to ask the courts to judicially review such decisions.

A recent example of that is a case of parents in the Windsor area requesting that judicial review take place to challenge the decision of the board, the separate school board in this case, which had decided to close some of its schools. The ruling in that particular case was in favour of the parents, who felt that their suggestion of the board not following their procedures was accurate.

In conclusion, in our opinion, under the Education Act, the Statutory Powers Procedure Act and other appropriate acts, there was ample opportunity for control over school boards by the electorate. We would be most willing to attempt to answer any questions that you may have.



**The Chair:** Thank you very much. Questions and/or comments? Mr Owens, please.

**Mr Stephen Owens (Scarborough Centre):** Just let me begin, Ms Hendriks and Mr Slack, by thanking you for your presentation this morning. I have the pleasure of working with one of your trustees, Carol Devine, on various issues, especially in the area of developmentally handicapped students who are in attendance at Monsignor Fraser College. She does an excellent job and cares a lot for her people.

In terms of your brief, I guess I'm distilling from your comments that you in fact believe that the Ombudsman has no place in the schools and in the Education Act. Is that the correct opinion that I'm drawing from this?

**Ms Hendriks:** In our opinion, we feel that there are ample opportunities for the electorate to question the decision-making of the trustees. It's our understanding that the Ombudsman does have jurisdiction or has some authority over the Minister of Education, and our feeling is that our electorate does have the opportunity, through the various sections of the Education Act and the Statutory Powers Procedure Act, to have recourse to challenge the decisions and to question the decisions of the trustees.

1030

**Mr Owens:** The one concern that I have is with respect to placing matters of education before the courts in terms of students who have gone through the IPRC program or students whom the board wants to declare hard to serve. First of all, it's a very expensive proposition for both the board and especially for the parents, and I suggest that in many cases it would be out of reach. In your view, would the Ombudsman not be both a cost-effective and a fair way of appealing decisions that the parents and/or students may be at variance with, rather than resorting to the courts?

**Ms Hendriks:** In my opinion, it would be except that if the jurisdiction of the Ombudsman were to be expanded, there would be a necessary expansion of services that would be required to effect that. I understand that there is a budget of \$9 million at present and a staff of 125. In comparison to that avenue and from our understanding of what is now available through the Education Act and through the various acts, it would appear that this might be even a more expensive way and an unnecessary, redundant way to expand the opportunities for the electorate. I think that we have at least attempted to point out that there are avenues now available that don't seem to be stumbling blocks. I don't know if our executive director, Pat, would like to expand on that.

We see it as an unnecessary and redundant decision to expand those areas of jurisdiction when in fact there already are opportunities that have been proven to be effective for the use of the electorate in challenging the decisions, and we tried to cite some of the most recent examples of that.

**Mr Owens:** I appreciate your thoughts, and I've certainly not made up my mind on this issue. You've provided some interesting food for thought. I'd like to pursue those with your association at a later date.

**Mr George Mammoliti (Yorkview):** Thank you very much for coming out. I appreciate it. For the viewing audience, could you please tell us in a nutshell exactly what your mandate is as an association?

**Ms Hendriks:** In a nutshell? We have a board of directors that is composed of 26 trustees from all across the province. We attempt to provide services to them, liaison for them and with them to the Minister of Education. We attempt to address concerns that they may have. We make representation to the minister, we sit on various ministry committees and attempt to provide a focus at the provincial level for the concerns of our member boards, in particular as they concern Catholic education across the province.

**Mr Mammoliti:** I assume that there's a fee attached to all of this for the trustees?

**Ms Hendriks:** That is correct.

**Mr Mammoliti:** What is that fee?

**Ms Hendriks:** It is based on the pupil population of each of the boards. There is a formula that we have used that attempts to provide a fair membership fee for the boards to our association, and that helps to fund the services that we try to provide on their behalf.

**Mr Mammoliti:** I tend to agree with you in terms of trustees being a little more accountable to the public. I know that first hand because I go to quite a few of the meetings, and they certainly have to answer a lot of questions and make sure that they do the right thing. On that point I do agree with you.

But I find that in most areas, parent-teacher associations do exist and that's where they're usually more accountable, in my opinion. What about areas where parent-teacher associations aren't active and it's in the discretion of the trustees and the superintendents? What about those particular areas? How do you feel about the Ombudsman looking into those types of areas?

**Ms Hendriks:** I think in any jurisdiction the activity of the parent-teacher association will depend on the community, the parents, the teachers, the willingness and the interest of that particular community to make it an active community. Often what we have found is that it takes a particular concern or interest that would pique the interest and activity of a particular school community. In some cases a community is vibrant and very active regardless of whether there's a particular interest.

I don't think that even the involvement of the Ombudsman could make a community alive and active if that community is not willing and receptive to that. There are certainly areas where we feel there could be improvement in terms of the communication with parents. All of us are aware of that and we try to address that. I think we're dealing in an era, compared to many years ago, where the small school community and the focus of the community in that school is not necessarily the same as it once was. Parents, in many homes, are both working outside the home. They're not quite as able, timewise even, to become as active in their school community unless it's a particular area of interest.



**Mr Mammoliti:** Just for the record, I do agree with you on this. The reason I'm asking these questions is because I've certainly been asked these questions. And those are the responses that of course I've given.

But there is one area that I'm concerned about—just leave the trustees aside for one second, if you don't mind—because the decision-making that superintendents would have sometimes doesn't necessarily reflect the views of the trustees. How do you feel about the Ombudsman getting involved with that level, the superintendent level?

Am I making sense or not? Would you like me to rephrase that?

**Ms Hendriks:** Are you suggesting that the superintendents perhaps should be accountable to the Ombudsman as opposed to the board?

**Mr Mammoliti:** I'm just asking how you feel about that.

**Ms Hendriks:** I think it could prove quite difficult for there to be an agency that might be perceived as interfering in the relationship between the supervisory officers and the trustees. I know what you're saying. The public is saying that the trustees should be accountable for the decisions of the board, and that in their perception, supervisory officers sometimes are making decisions that are not necessarily the decisions of the board.

I'm not so sure that's always the case. I think the board needs to be sure that its policies are established and the supervisory staff are following the guidelines of those policies. Communication is probably one of the critical factors in all of that—communication and relations between the supervisory staff and the trustees and the board and the community.

**Mr Mammoliti:** For the record, in terms of expanding the role of the Ombudsman, I'm still not convinced there isn't a problem within the office, and I think that expanding it would probably make it worse. So I thought I'd just say that because I'm very frustrated with what's been happening, and I'd like a lot of questions answered.

We'll just leave at that, Mr Chair, for now. I've got other comments to make later.

**The Chair:** Thank you very much, Mr Mammoliti, for your insight.

1040

**Mr Alvin Curling (Scarborough North):** Thank you for your presentation. I should declare immediately that I believe in the Ombudsman's role. I think it's important that we have an Ombudsman in the province. I think our problem now is that we don't have really defined legislation showing how it should be properly operated, where it should be operated, who's accountable, rather clear about it, and we are in for a wrangle of interpretation of laws and who has the powers around here.

Your presentation focuses really on, more or less, the school trustees. As you know, the Ombudsman at least has jurisdiction over the Ministry of Municipal Affairs and the office also has jurisdiction over the Ontario Municipal Board, but the concern is it has no jurisdiction over the

municipalities. Therefore, if there are investigations to be done, there's only so much they can do.

It's rather contradictory in a way that the Ombudsman has jurisdiction in the big Ministry of Municipal Affairs, but the other factor that falls within Municipal Affairs is that individual, the Ombudsman, has no jurisdiction in the school trustees. I just want to put that in place.

The other part, which I slightly disagree with you on—I know you draw a lot of reference to the fact that they are already being quite well looked after and controlled under different acts, within the Education Act, but we politicians through the Parliament are accountable in a number of ways. Lest you forget, and of course you know, we have the government accountable each day in question period by making it accountable for every act, not only itself but also through the ministry. That is one of the very effective ways. Often, as you see, the government tries to scatter away from question period as soon as the heat comes, but it is there and it answers the questions to the best of its ability, not only in that question period time but there are also written questions that are submitted.

We also have the conflict of interest, which everyone has, as an accountability session too. We also have the Commission on Election Finances, how we behave, each individual, so there is accountability for those provincial and federal politicians.

This committee itself has an accountability too for any act. I just want to say to you that there are balances. I see there are a lot of reasons why the Ombudsman could be looking inside the schools themselves, and I have many cases of students who have had a very difficult time with—maybe if I say it in this way, in a simple and practical way—grades or absenteeism that they are trying to challenge. By the time they appeal it through the process, what happens is that each one just confirms what the others say and the parent or the child ends up with the same type of decision. I'm just saying that from experience.

The parent or the student who feels that they are not being treated properly, if they take it through, for instance, the human rights—they have to file a case and justify it to the human rights—and fail, I think they should take their case to the Ombudsman. This is to say: "The system itself is not working in my favour. Could you investigate?" So I would be one who would support that the Ombudsman look at those things.

Now you're specifically saying the trustees, and I can't see a role that the Ombudsman—the trustee is an elected individual—should then start to investigate trustees, and I think that's how I got the drift here because there are two ways.

Maybe I should ask then to explain to me, are you then focusing that the Ombudsman should not have jurisdiction to investigate trustees or not have jurisdiction to investigate some of the procedures I just talked about, some of the problems a student or parent will have? Could you clarify that for me? I hope you get my drift.

**Ms Hendriks:** I think what we were trying to provide in our brief was an indication of avenues available for parents, for the electorate, to challenge the decisions of the trustees, the actions of the trustees. The trustees are making



decisions that directly affect the students, particularly in the area we had suggested here, where decisions are made about students who have special needs. There is an avenue through the appeal process, the tribunal etc, whereby the parent who has concerns about his particular child does have an avenue, several steps to go through. It may begin at the school, continue on through the board level and so on at the provincial level.

We were attempting to address both the accountability of the trustees and the concerns of the parent over his particular child. Perhaps the area of improvement in that process might be one of communication and insurance that the parents do know what avenues are available to them. That certainly is something I believe a lot of parents aren't necessarily familiar with. Whether it's at the local level or at the provincial level or at the federal level, I'm not so sure the general electorate is always aware of the avenues that are available to them.

**Mr Curling:** I'm finding, though, as I said, that even if that parent or student knows the process, still all they're getting is just a copy of the same decision of the level. In other words, they go to the teacher, the teacher goes to the principal, you appeal it to the principal and the principal will say, "Yes, I agree with what the faculty has stated here." The individual will take it to his trustee or the superintendent: "Yes, I agree. I think it is fine." It's all each one investigating each one, like the police investigating police.

Therefore, I feel that if someone has taken that through the process and is not feeling rather comfortable that justice has been done—it may seem to be done, and sometimes that cliché never really grabs me anyhow, because the emphasis is more that it seems to be done. But it's not done, and like I said, I want to take it somewhere else.

If I go to the Human Rights Commission and I don't feel satisfied about that, where do I go? I think the Ombudsman is a good place to take it. I don't believe the Ombudsman should be investigating trustees and superintendents. I think it's interfering with the process in there, but through that process it shows we would be able to investigate that decision.

**Ms Hendriks:** I'm afraid I'm not familiar with what would happen after the Human Rights Commission. I do know that many of our parents who do not get satisfaction or feel they have satisfaction at the local board level have in fact contacted the provincial Ministry of Education and pursued their concerns through that avenue. Whether it's always a decision that has supported the decision at the local level, I'm not aware. Just from personal experience, I do know that there has been that avenue available to them.

**Mr Slack:** Just as a quick response to that as well, I worked in the educational system and I was a teacher and a principal and a superintendent, and through that process have sat in all of those different places. I was a student too. I do know there are problems and there are indeed difficulties that you've just mentioned that are hard to resolve in any of those settings.

I can recall with clarity, and I know it happens often, that teachers are counselled to change their views on things, particularly marks of students. It is the jurisdiction

of the principal to change that, and my own experience is that we did many times.

If the failure rate in the class was unacceptable to the view or the philosophy that the principal held, the challenge was addressed and changes were made. In my own case, I made many of them in the interests of students. I'm not sure that's every principal, but I think it's the responsibility of that role.

Then, as superintendent, you're often required to review the decision of a principal in the view of perhaps a wider problem within a community, and my experience there again is that it is reviewed rather critically and often—not often—there are changes made, there are influences made that help to change.

I guess sometimes when a mistake is there, it's made and you can't back up from it. You have to then correct it in the future. You can't go back to yesterday and do the right thing, because you've already injured the student or the teacher, or harm has been done. But I've come away from that experience of being an educator for 35 years believing that we did as best we could, and I know we failed on some of them.

1050

**Mr Curling:** Mr Slack, you have expressed it exactly the way I've seen it at times. Most of the cases are resolved in the way you've said, with extreme cooperation by superintendents and principals, but one or two go through. We say we can't change the law for that, but I tell you, one destruction of a life—

**Mr Slack:** Yes, I agree.

**Mr Curling:** —is just horrendous, and I will be very blunt, especially with the minorities. I have a lot of black students who are coming to me who have genuine concerns.

**Mr Slack:** Oh, sure.

**Mr Curling:** Just one shattering of hope, of vision—and we're speaking about one or two. I want to be on record that the majority of the principals and superintendents and teachers are very good, but that one or two just destroy a lot of life. Do you feel the Ombudsman could play a role here, if that process, as I have described, as we go through all that, go through the Human Rights Commission—

**Mr Slack:** My experience has been that the Human Rights Commission has been able to deal with those one or two, and I can think of the two cases—

**Mr Curling:** With that backlog there, I'm not quite sure they can deal with it.

**Mr Slack:** That might be a problem I don't understand.

**Mr Curling:** As I said, this is justice denied by not being there. The courts are packed up, the Human Rights Commission is packed, the Workers' Compensation Board has a big lineup, and I'm not blaming, because people are more conscious about exploitation in a rather covert way; therefore they are aware of this, just like sexual harassment and all that. People are coming forward, but I'm not quite sure if it's being handled, if they can wait that long.



**Mr Slack:** If I may, Mr Chair, just one quick response. I think it's more recent that it seems to have been in our educational field. Perhaps they were always there, but people didn't know they should challenge a bad decision or an unfair decision.

My own experience in the last 10 years would be that two cases went to the Human Rights Commission and resolution in a favourable way to the person injured was achieved through the discussion with the representative in the city I worked in from the commission office, and that recourse resolved those two rather I think wrong decisions and injurious decisions to a teacher in one case and to a black student in another case. Both were bad decisions by the authorities in the school system, but they were challenged and they were reversed, so I have more confidence that we can do it, but maybe we fail still in some of those places.

**Ms Hendriks:** I think the point we are trying to make in our brief is to recognize that there may be needs. Certainly this committee is looking at whether or not the Office of the Ombudsman should be the one to address those needs. Our suggestion is that in our opinion there are avenues that are already available for the education system. If there are some pitfalls, shortfalls, perhaps a review of some of those areas would be in order, as opposed to providing what we perceive to be a system that might be redundant and a duplication of services. I think we're all aware of the concern about that kind of duplication potential.

**Mr David Ramsay (Timiskaming):** Thank you very much for your brief today. I found it very informative because it has come to us from a very different point of view and a very different angle, primarily targeted at whether we should be expanding the powers of this particular office. I really agree with your points, and I agree with you for two reasons.

We would have to be very cautious in this committee to recommend expansion of powers to any sort of local board or agency, because if we do that for one, we really would be obligated to do it for all. It would seem to me we would be creating either a brand-new bureaucracy, which is the way I think one would have to go if one went that way, and quite frankly today in society we can't afford that and we don't need it.

My second point is, I think it's an obligation on us as citizens—not just a right but an obligation—to defend democracy. We should be at local board meetings and council meetings with our ratepayer groups or as individuals and hammering away if we don't care for a decision, getting involved politically, and throw out a council or school board if we don't like its direction, rather than sort of taking a lazy route of saying: "Oh, well, we don't like that. We can call this Ombudsperson and we'll try to get it fixed."

I can just see the cases coming in. I'm sure we would have a service that could be handling double the cases that we have today in dealing with the provincial government. It's so much easier, at the local level, to be proactive in democratic action than it is with the provincial govern-

ment. That's why I see that there certainly is a need to have a provincial Ombudsman. Absolutely.

But if we start having somebody looking over the shoulder of every board and agency now—and we're talking children's aid and the hospital board—I mean, there are hundreds of these boards. There are 760-odd municipalities across Ontario. We may even double the bureaucracy of what we have today because of all this, and people will just say—it's so easy—"Just call the Ombudsman."

I think we'd have a real mess on our hands. It's much more difficult for people to deal with the bureaucracy at Queen's Park, being such a large province and such a large bureaucracy, and we need a very strong Ombudsperson as the watchdog, for sure. But if we open that up to looking at every local board and agency, I think it would be wrong. So I just want to say this morning that I agree with you.

**Ms Hendriks:** Thank you.

**Mr Bill Murdoch (Grey):** I just want to echo what Mr Ramsay just said. I also agree with your brief. I can see where maybe Mr Curling has had some experiences, and there are some problems in some areas, but I don't think we can have everybody running off to the Ombudsman. I think the office was set up to govern ministries here at Queen's Park. They do their jobs and they'll look after affairs of trustees.

I'm a past councillor and reeve of a township and I certainly wouldn't want to have the Ombudsman chasing after municipalities all the time. We have enough trouble as it is now trying to do our job. I don't think we'd want to have another one over our heads. I don't need to go on and on, because David wrapped up pretty well and Alvin is sitting right here beside me. But I just want to tell you I agree with your brief. I thank you for bringing it to us.

**Mr Curling:** Mr Chairman, I don't know if you want a rebuttal to that.

**The Chair:** No, I don't need a rebuttal, Mr Curling.

**Ms Margaret H. Harrington (Niagara Falls):** What we're talking about here is adequate checks and balances, and you're saying the system that is in place now is adequate. I did have a couple of questions with regard to that system you have in place now that arise directly from your brief.

First of all, your premise at the beginning that elected officials are certainly answerable at an election, I think we all understand that part of it. Of course the situation I think we are talking about is between elections, particular decisions, individual items which may not be reflected at election time that have to be dealt with in between.

One such mechanism for dealing with these reviews of decisions that you mention on the last page is what you call a board of reference. It says, "A teacher has a right to a hearing before a board of reference in the event that the board terminates his or her teaching contract." Can you tell me what that is?

**Mr Slack:** What a board of reference is? I can give you the exact definition. When a teacher is in jeopardy in terms of some decision made by the board that has employed that teacher, has dismissed the teacher, and the teacher believes it's an unjust or unfair decision, he or she



may appeal to the minister to have a board of reference hearing to challenge the board's decision, explain the position of the teacher and reverse, if possible, the decision on that teacher's employment. It's usually employment, I think, that they are dealing with.

**Ms Harrington:** So what I'm gathering is that the person will have to appeal to the Minister of Education.

**Mr Slack:** There's a section in the act which directs you how to do this. It's not a difficult process, because it's really looked after by the representative for the teacher, which could be his or her federation that would in fact challenge the decision of the board for the teacher and carry that forward as an association would perhaps for a member of its association.

**Ms Harrington:** So these would be people who are appointed by the minister.

1100

**Mr Slack:** There is someone appointed to hear that. I don't know the status of that person in terms of background, but there is an appointment made to hear the case of the teacher's complaint against the decision and to judge that decision.

**Ms Harrington:** And that's called a board of reference.

**Mr Slack:** That's a board of reference.

**Ms Harrington:** I wasn't aware of that before, and I was a teacher.

On page 3 you talked about the exceptions to a school board meeting being open to the public and/or parents etc. You mentioned five items which are the exceptions. My question is, what about staffing matters, personnel matters? Are they closed meetings? We're talking about hiring, firing, this type of thing, because I am aware that the public has been told that it was not to be there at such a type of meeting.

**Ms Hendriks:** That is included under the section "disclosure of personal information."

**Ms Harrington:** So "personal" would also mean "personnel"?

**Ms Hendriks:** Personnel.

**Ms Harrington:** Thank you very much.

**Mr Owens:** Just in terms of some of my friends opposite, I'm not sure that I agree totally with some of their comments. In my view, a person going to the Ombudsman—and I stated earlier that I haven't made my mind up in this situation; I would not see every Tom, Dick, Harry and Jane coming to the board—would be going for more esoteric reasons than simply: "The child was told to stand in the corner. We don't think that was an appropriate type of punishment," and blah, blah, blah.

When I look at some of the comments you've made in your brief, the thing that troubles me is again if, in the view of the child or the parents, they disagree with a decision—for instance, on page 4 of your brief, section 43 of the act, "an applicant for admission to a secondary school," blah, blah, blah, "by the principal may appeal the denial to the board." What happens if, in the view of the

parents—it's the third-from-the-bottom comment—they disagree or the child disagrees with that decision, so they go to the board and the board turns them down?

**Mr Slack:** My response to you would be that they still have recourse. They cannot be denied admission to a secondary school, and anyone who presumes they can do that would be challenged by the superintendent, then by the parent going directly to the board. If the board didn't understand its responsibilities, they could go beyond that again to the ministry through the regional office, or a letter to the minister directly is always answered. I think those things are challenged rather effectively by parents and by students. Principals, in my experience, are quite wary of that inability that they may want to exercise at times.

There are reasons later, when a student is in your school and becomes, in effect, a detriment, as it says, to the wellbeing of the students, a clear decision can be made about his or her not being in the school for a period of time, the suspension, and if in fact that does not influence the change that's needed on the behaviour, an exclusion or an expulsion from the school, again a decision by the board itself, can limit that student's ability to go to school in that jurisdiction.

**Mr Owens:** Sure. Would your group not perhaps, if in fact you were covered, use decisions by the Ombudsman to lobby the government for additional funding, especially for the children with special needs, if the Ombudsman declares that the child is not being served properly, blah, blah, blah? Would you take the decision to the Ministry of Education and say: "Look, the decision has come out. We need the money to put this particular program into place for that child, or children of a similar nature"?

**Ms Hendriks:** Is that not an area where the local member of provincial Parliament would be the direct contact for the parent?

**Mr Owens:** Absolutely, but sometimes we need help as well, no matter which side of the House we sit on.

**Ms Hendriks:** I'm sure in those instances there have been occasions when the local trustees or municipal councillors have met with the local MPPs, as I'm sure all of you are aware, and attempted perhaps to go together to whomever to lobby.

**Mr Owens:** Absolutely, and as I mentioned, I've been working quite closely with Carol Devine on Monsignor Fraser College, and the separate school funding issue as well. So yes, that interdigitation has taken place, but again, in terms of just that extra push, perhaps while politically we may be on side, the bureaucrats may need that little extra demonstration of need.

**Ms Hendriks:** I guess that's an area where this committee would have to determine whether there's extra assistance that's required of the Ombudsman. I think the point we're trying to make is that we think, in our opinion, there are—

**Mr Owens:** I'm trying to help you out here.

**Ms Hendriks:** I'll take the help.

**Mr Owens:** Just a question to counsel: On page 4 of the brief, the third point from the top, "Under section 35 of



the Education Act," I wonder if we could check to see if, under the consequential amendments to various pieces of legislation as a result of the Advocacy Act, substitute decision-making and consent to treatment, whether in fact this is going to have an impact on this section of the act with respect to advocates in the schools.

**Mr Paul Murray:** Yes, I can examine that question and get back to the committee.

**Mr Owens:** We'd certainly appreciate meeting with you at some point as well.

**Mr Paul Klopp (Huron):** Good morning. I find this very interesting. I take out of my experience that the Ombudsman is there for the last resort. As a farmer and whatever, I know there were people even at the Ministry of Agriculture and Food who felt that they had gone through all the hoops. They want an avenue and it's there.

I think earlier you answered part of this first question that I have, but I'd like a little more clarification. There are always cases, no matter what, where I've gone every avenue, and I still don't agree with the decision. I'm also a big enough person to recognize that if 12 people have told me I'm wrong, maybe I'm wrong. But it's a democratic right that I can keep asking if there's another avenue. That's a personal opinion here.

Roughly how many cases—and I don't expect you to know there were 142 in the last 10 years or anything—have you had where the client, no matter who it is, has really gone through all the hoops that you have shown here and still not been satisfied or understood the answer maybe? Do you have that number at all?

**Ms Hendriks:** I'm afraid I don't. Do you have any numbers?

**Mr Slack:** I can't give you a number, but I can give you an impression of that.

**Mr Klopp:** Yes, maybe that's the way I should do it.

**Mr Slack:** It seems to me that a number of people are like you. They aren't satisfied, but they will accept the judgement that is placed on them by a number of judgements. Repeatedly finding that they are in agreement sometimes convinces them: "Maybe I am misunderstanding," or "Nobody else understands me." I don't know particularly if that's it, but I often feel that the decision is a compromise to meet both needs, of institution and of individual.

**Mr Klopp:** I guess my question is a feel of, even after all that's been done, how many have gone on and still tried to beat as many drums as possible, no matter what.

**Mr Slack:** In my own experience, my response before was that there are two particular cases that I can recall—three, I had better say, because a board of reference as well—that have gone right to that limit, and two of them went to the Human Rights Commission. The individual was addressed and the needs were readdressed there. So they saw it differently than had all the people preceding that.

1110

**Mr Klopp:** That leads into my second question. I get a feeling from this that what you're saying today is—and

maybe it comes out of other questions and answers that you've given—that the Ombudsman is not the place to fix human rights issues, that one is too many. It's like dying: Once is enough; it's pretty permanent. It's too bad.

But your feeling is that the Ombudsman's job is here, continuing with the Human Rights Commission and making sure it's doing a good job. You're satisfied that if you're putting money into this, it's the way to go for the one case and one too many that is there that shouldn't be backlogged; also the employment equity, the Advocacy Act. Where I come from, it seems we have a pretty open mind on a lot of issues, but there are people who have biases and there should be avenues where they should go to have their day. It might even be me they're taking and hauling in front of—I'm big enough to understand that too.

Is that what you're saying, to continue and get those routes going? The Ombudsman is not the avenue to take for human rights, all those cases?

**Ms Hendriks:** I think what we're basically attempting to say is that in our opinion there are ample opportunities and avenues available, through existing acts, for the accountability and control over the decisions and actions of school boards, and that if in fact there is a need to address any particular concerns, rather than expanding the role of the Ombudsman or any other level of bureaucracy, perhaps the review of those existing acts would be in order.

**Mr Klopp:** The Human Rights Commission was one thing that was backed up. In one of my first jobs I had four or five people, not on education but on other issues in their lives. I know the minister has been working hard and this government has been working hard to get it on track.

Employment equity: One says, "Why do we need to gently shove people to realize that there are many people to hire?" One of the things I've come to realize is that if all groups of the world are kind of working in the neighbourhood, one doesn't have where it has to go as far as human rights; it gets resolved earlier because people are meeting in other groups long before and recognizing the problems and reaching a settlement. I think we are working on those things, and I agree a lot more with where you're coming from, personally. I see where you're coming from.

**Ms Hendriks:** I think if I may, Mr Chairman, in our examples that we tried to cite of recent decisions or changes in decisions, we tried to point out that in our opinion, school boards are very much in the forefront of the accountability process because they are in the local community.

In the recent decisions that provided a reversal of decisions—and I believe at least one of those perhaps led the Ombudsman to make a statement that there should be an expansion of powers—we tried to point out that there was in fact a reversal of a decision in both of those cases, which presumably will be in the best interests of the electorate, be they the parents, the ratepayers or the children in the system. We are simply trying to suggest that, in our opinion, those avenues are already in existence, and we would caution against a duplication or a redundancy of powers.



**The Chair:** Mr Hansen, do you have a comment or question?

**Mr Ron Hansen (Lincoln):** Yes. Ms Hendriks, welcome to Queen's Park. You've done a good job representing Lincoln as a trustee.

**Ms Hendriks:** Thank you.

**Mr Hansen:** I receive very few calls. I represent about four independent school boards and two private schools, so I have enough boards to meet with and I have to share my time.

The biggest problem I've found with parents and the education system is communication. Instead of talking to the principal, they would come to my office because they've got a problem with the teacher. I don't interfere at that point, but I say, "Let's get a hold of the trustee." The trustee gets involved at that particular time, which saves a lot of problems.

I believe one of my colleagues on the other side said that maybe the Ombudsman should come in at the point of looking at the superintendent. That is the wrong position in which to come in if you're going to use the Ombudsman. That would make the trustees not accountable to the people who elected them to carry on their job of keeping the superintendent in place, so I disagree completely.

I have some concerns at the very end. There wasn't an answer on how many get to the judicial decision; I think there can be a lot of work done before that, compromises and everything else. If it comes down to a judicial review, I think that would be the only spot where there would be a choice: There would be the avenue to go to the Ombudsman or go to the judicial. It could be that it would be cheaper to go to see the Ombudsman than it is to get into a court case, so I think that, if any area, that should be the area that would be open. Would you like to comment on my remarks?

**Ms Hendriks:** I guess it would have to be the role of this committee to compare the role of the Ombudsman in that particular situation as compared to the existing avenue of the judicial inquiry; compare the cost, compare the effectiveness, compare the availability. I really don't have the experience and knowledge to know just what those comparisons might be, and I guess that's where we were suggesting that perhaps a review at that level of the existing avenues of recourse might help this committee determine whether that is still the best avenue to consider. We are suggesting that it is, but we are not privy to the kinds of information you may have to actually compare the role of the Ombudsman in that particular situation with the judicial avenue. We're simply stating that we wouldn't want to suggest anything that would be a duplication or a redundancy of an existing recourse for the electorate.

**The Chair:** Mr Perruzza, I understand you have a brief comment or question.

**Mr Anthony Perruzza (Downsview):** I understand that time is short, Mr Chairman. I've read quickly through this brief and I notice a pet peeve of mine, which you addressed rather substantively. It has to do with pupil expulsions from school. It's something I grappled with long and hard when I sat on a school board. It's something I

didn't agree with then, and agree with even less now. I've never believed that the solution for a problem student is a three-day, five-day, 10-day—I believe at that time the maximum was a 15-day suspension; to just send them home and have them wandering around the streets for 10 or 15 days while their classmates are continuing in their education. Lord knows, we expend billions of dollars every year to educate our students, and that denies them the education. We don't do a service either to them or to society at large by simply refusing their admittance in schools.

I agree that at times you need some disciplinary measures to be able to discipline students, but I've never believed that expulsion is the way to do it. I remember the long lists of expulsions at the school board, that we approved on a monthly basis, for five and 10 days. In my last year there, the rather lengthy expulsions probably dominated the list, rather than the short two or three days.

The way it happens is that you get expelled and then two or three weeks later that expulsion is reported to the board. You're sent home; you're not admitted back in school, even if you appeal it. Then what can happen is that the board can review the decision made by the local principal, and I suspect in some cases the superintendent, and remove that red flag from a student's file or from a student's history. But those three days or five days or 10 days they missed educationally will never be given back, even if it's the decision at the board or at the tribunal that the expulsion was in fact wrongfully administered.

I guess it's more of a question. What would be your suggestion to us that would allay some of the concerns I've just outlined?

1120

**Ms Hendriks:** Thank you for sharing that concern. As a parent and a trustee, I share your concern as well. I would agree that removal of a student or exclusion of a student from the school is not necessarily the best alternative in the interests of education of that student.

I would like to think that expulsions and suspensions are not handed out easily and that there has been much thought given in most cases before that particular avenue is taken. I can recall, as a trustee, sitting on several committees where the alternative learning process has been used to determine what is the best alternative for some students. There is that avenue available to the schools to look at the particular needs of that student. I can recall that my personal involvement in that kind of session, whereby the parents and the students and the staff are involved, has almost been at the judicial level. It has been a moving experience for me as a trustee and for the parents and students involved, and often a solution is found for those students that meets their particular needs.

In terms of the expulsion and suspension program, there has to be, I believe, that avenue open in extreme cases. It's been my experience as a parent that staff has been open to discussion about the particular needs of my children in terms of dealing with discipline, and I think in the majority of cases those kinds of situations are addressed by communication and consultation.



I think you are pointing out extreme cases, and those are more difficult to handle. I'm not so sure I understand: Are you saying that perhaps the Ombudsman should have a role to play in that particular situation, or is it simply a question about whether the suspension or expulsion is an appropriate punishment?

**Mr Perruzza:** A little of both: One in hundreds, maybe even thousands, at the board level in terms of an appeal, and that's simply to remove a notice from a file. That's not to recoup three or five or 10 days' worth of education and instruction.

In the way expulsions are handed out, the decision is made unilaterally by the principal locally. I know of a case where two students were expelled simply because they were hanging around the hallway after a soccer practice late at night, and someone else made a wisecrack about breaking into lockers. I know the kids who were involved and they were two good kids, but apparently there had been a break-in in one of the lockers the night before or several nights before. The vice-principal, being within earshot of those comments, immediately moved out into the hallway and expelled the individuals who were in the hallway—no hearing, no reasons required.

I understand that in some cases you need to make an example of some students in order to set straight the others. Those students basically had no recourse: "Stay home. Yes, you can appeal it to the board three weeks from now," but all that'll do is remove the suspension from their file. That isn't going to replace the instruction they missed, the three or five days or whatever that they missed of school. Boards have been very reluctant to deal with this issue in terms of their appeal.

**Ms Hendriks:** I would like to ask Mr Slack to speak of his personal experience in this regard.

**Mr Klopp:** Getting kicked out?

Interjections.

**The Chair:** Can we have order here, please?

**Mr Slack:** We tend to use two words there, "suspension" and "expulsion," and they're quite different actions by an authority in a school system. One of my comments would be that I think we have moved forward in that area of social adjustment or personal adjustment for students. Some need to be helped to meet some expectations of schools, and they're usually fair expectations.

There's a code of conduct which has been developed in all Catholic schools. I believe it's a provincial regulation that there be a code of conduct which outlines the behaviour, to allow learning to occur for others as well and the consequences of not doing that.

Usually, there's a series of developmental steps towards a suspension. I don't like ever hearing about them being arbitrary and instantaneous, because that in my view is a totally inappropriate use of authority or power. That isn't a learning experience, of any positive consequence at least. I would say from experience that it's the last resort. Sometimes it's the only way to create the crisis that will begin the change, to send the boy or girl home and say, "Bring your mom back with you," if there is a mom or

dad, and sometimes that's what you find out. You don't know anything about this.

You'll say, "Well, we should know." It's difficult sometimes for one principal and two vice-principals and 50 teachers to know all of the events of 1,000 or 1,200 students. They are the most active and the most growing part of our society, ages 13 to 18. It's a challenge to run a school, and often I think mistakes occur. But this code of conduct has offered staff a way of seeing the steps towards solution, and sometimes the final step is that we've got to send this boy or girl out of the school. To do it because they're in the wrong place for one moment I think is just silliness, and I can't imagine that being a very common event.

**The Chair:** Thank you very much, Mr Perruzza.

**Mr Perruzza:** But when school boards—and this leads into my question, Mr Chairman.

**The Chair:** If you make it brief, please, Mr Perruzza.

**Mr Perruzza:** When school boards refuse, or do not deal fairly with appeals that are made to the board eventually, basically students have no recourse to seek fairness.

**Mr Slack:** I hope that's based on the board having preplanned consequences for actions and having approved codes of conduct in its schools. A suspension is a legal responsibility, I would want to call it, or legal right of the board to exclude a student from something that is injurious to the rest of the school. That's usually what I believe is the basis for having to draw the student out of a social context.

I don't know that it's injurious; it's embarrassing and it's frustrating and it angers a person. I do feel, though, from a long list of recalls in my mind right now, that it helps sometimes to bring the student to a point of decision. I hope it's not done angrily. As a principal and a parent too, I went through it with my son being suspended from school; I was the principal of another high school, and it's quite an event for a principal to have to address another principal as a parent. I think I understood what he was trying to do; I didn't feel very good about it, but I think feelings and thoughts are different in this case.

I'm not trying to support suspension, but I believe that the authority of the school to protect the right of other people there to learn is important, and sometimes creating crisis can help to change a boy or girl from more destruction to a more positive behaviour, and suspension helps in that case, once in a while. It shouldn't happen to a person five times in a week or five times in a year. Something hasn't been solved.

**Ms Hendriks:** Might I suggest that in those particular instances a parent would probably be most welcomed at a meeting of the board to discuss the perceived inappropriate use of a line of authority. I think that has happened in some cases and has been addressed. I don't think we need the Ombudsman to address those situations.

**Mr Perruzza:** What my concern is—

**The Chair:** Thank you very much, Mr Perruzza.

**Mr Perruzza:** My last comment, Mr Chairman. My concern is that they haven't received that kind of fairness at the board. Trustees don't have the time or often there are

too many of them to really familiarize themselves with a particular case, and they're basically at the mercy of the reports that are generated by the staff and by the principals and superintendents. The hearing, in my experience, hasn't been fair. I think there should be, in those particular instances, some other level of appeal, of recourse for those students.

**The Chair:** Thank you very much, Mr Perruzza. Ms Hendriks and Mr Slack, I want to thank you for taking the

time out of what I know is your very busy schedule this morning to come and see us. Your presentation was very thoughtful and very insightful.

**Ms Hendriks:** Thank you for the opportunity to have appeared on behalf of our association.

**The Chair:** This committee stands adjourned until 2 pm this afternoon.

The committee recessed at 1131.



## AFTERNOON SITTING

The committee resumed at 1410.

GAIL MORRISON

**The Chair:** Can I call this committee to order, please. Good afternoon. I'm Mark Morrow, chairman of the standing committee on the Ombudsman. We're here reviewing the operations of the Office of the Ombudsman. This afternoon we have appearing before us Gail Morrison, former director of the investigations office of the Ombudsman.

You have approximately an hour for your presentation. If you would, please leave some time so that the members can ask you questions and/or make comments. Begin when you feel comfortable, and although I've stated your name into the record, could you please also do so.

**Ms Gail Morrison:** Good afternoon, committee members. My name is Gail Morrison.

It's in some ways very nice to be back in this room. I spent quite a number of hours in this room before the Ombudsman committee a number of years ago in my capacity as director of investigations at the Office of the Ombudsman.

I am no longer with the Ombudsman's office, and before I begin I would like to make a few comments to stress to you that I'm here absolutely for my own purposes and to express my own views. Nothing I say really is related to anything that's specifically going on at the Ombudsman's office, because I'm not informed about that. I have no particular views on that. But I felt, as a citizen, that it was important that this committee have as much information as it could have about the operation of the Ombudsman's office and the way this committee has in the past related to the Ombudsman. I thought it was an important opportunity for me to express my views, which many people don't agree with but which in fact I hold strongly, about the importance of the office and about the way in which I think the Ombudsman and the committee could best work together.

As I say, I'm a very strong supporter of the Ombudsman concept. I think with the very large bureaucracy that we now have and the problems people have in understanding the way in which they relate to government, the Ombudsman's office can provide a very valuable link for the government, for the bureaucracy, for the regulating agencies, to the citizens of the province.

I have not had the opportunity to see the other presentations which have been made to your committee, so I apologize in advance if I make comments which are repetitious of things other people have said. I did see some of Professor White's presentation. That's the only one I had an opportunity to see, and many of the things he said are things with which I agree strongly. There are very few things he said that I didn't agree with, and those will perhaps come out in our discussion.

I understand you had the former counsel for the Ombudsman committee, Mr John Bell, here, I think yesterday. Mr Bell of course is a very experienced person with the Ombudsman committee and, I'm sure, gave you all kinds

of valuable insight into the way the committee has operated in the past. Since we coincided in time in our dealings with the former committee, there may be many things that I say which are repetitious, so I ask for your indulgence in that respect.

I think the usefulness of the committee is the first thing I would like to approach. I have said I found the Ombudsman institution a very useful one. I want now to address the views I have about the usefulness of the committee.

I provided to the clerk a copy of an article I wrote on the relationship between the Ombudsman and the standing committee. This was an article I did in an academic setting, so it's a little dry and not particularly exciting reading; no pictures. In some ways, my views are not all exactly the way they were when that article was written, which was a couple of years ago, but I think some of the examples in that article do suggest the way in which the Ombudsman has in the past been very much helped by this committee, and I would just like to run through a few specific points about the way in which I think this committee can assist the Ombudsman.

The first are the recommendation-denied cases. I think the committee has, in the past, been able to assist the Ombudsman in correcting matters which could not otherwise have been corrected by agreeing with the Ombudsman's recommendation and making a recommendation to the governmental organization that the Ombudsman's recommendation be implemented. That has often been a struggle in the sense that it has taken several days, perhaps, of presentation of the Ombudsman's view and the ministry's view to this committee, and the committee members have struggled with the rights and wrongs of the recommendation and in the end have made their own recommendation about how the matter should be settled, whether it should be implemented or not. In many cases it has been an immediate effect; that is, once this committee has accepted the Ombudsman's recommendation, the governmental organization has been very quick to implement it.

Those are the rare cases in the Ombudsman's office. They are very few and far between, but they are the ones in which the Ombudsman feels strongly enough about the governmental organization's wrongdoing or failure to act reasonably that he or she feels the matter should be taken for the full distance and that something should be done about it.

Sometimes the Ombudsman's recommendations involve policy which should in fact be subject to the political process. I think that in a democratic state such as ours, it's not acceptable to have an appointed official deciding broad policy issues which we expect to be decided through our political process. I think in those cases the governmental organization may resist the Ombudsman's recommendations because it feels that the recommendations involve a policy change which is not within its mandate to make or that is not in line with the policies under which it operates.

Here the committee's review provides the first step in bringing this into the political arena, and I think its referral



of the matter to the Legislature may result in a more thoroughgoing political review if that turns out to be necessary. It's difficult to give good examples that don't seem trivial without actually going back to facts of cases that I remember. But there are often broad policy implications to complaints brought to the Ombudsman such as, say, coverage under an insurance scheme or some kind of decision of that sort.

As you're aware, of course, the committee is made up of members of different parties. If, for example, those parties had been elected on very diametrically opposed slates on a particular policy, then it seems to me when a question arose at this committee about that policy, it would be necessary for those members of this committee to be faithful to their party's position on that particular policy. In that case, the Ombudsman, having brought the matter here, provides a forum for the political process to take over and decide what might be an important policy matter either right here or, if that's not possible, by referral to the House.

That particular role of the committee is one I see as being important but one with which many of my colleagues disagree, so I should say it's a very personal view of mine that there is a place for politics in this committee. I think you read a lot about the apolitical nature of this committee and what a wonderful thing that is. Indeed, in many of the cases it's very sensible that this committee doesn't divide on party lines, because what it's looking at is not a political question; it's a question of whether bureaucrats acted properly or whether there was a mistake of fact of some kind in the original decision. In those cases, I quite agree with all those people who say that the apolitical nature of this committee is a very good thing, because it means these matters can be settled and thought about in a cooperative and, I think, in a very useful way. But I do think that there is a place for political decision-making in the committee on some kinds of questions which involve government policy.

1420

Another way in which the committee is very useful is that ministries or government officials on boards, whoever's making decisions affecting the public, knowing that a particular act or decision they have made has been found by the Ombudsman to be unjust or unreasonable or wrong and that they may receive specific public scrutiny at the committee, may give the matter some serious thought. I think the committee, as a kind of last resort for the Ombudsman, lends weight to the recommendations he or she makes and makes the governmental organization give very serious thought to her recommendations. Without some last resort, there may not be very much that presses the governmental organization into fixing the problem. There is a report, a written report of the Ombudsman, and the written report of the Ombudsman is a very valuable tool to the Ombudsman's office, but in my experience in the Ombudsman's office, it was often the idea that the committee would actually look at the recommendation and discuss it and ask questions about it and be interested in it that was just the thing that was needed to make the governmental organization go back and say, "Maybe that wasn't just

what we wanted to do." I think the committee has a role to play, just by existing, for those types of cases.

In another way, even further back, I think bureaucrats who become experienced with the Ombudsman's process and know the consequences of a careful review by the Ombudsman—that that review could lead to a possible public airing of their decisions—may make their decisions more carefully in the first place, which I think is one of the major advantages of having an Ombudsman.

There has been some discussion about the committee, what the committee really is. In my view, the committee is a representative of the Legislature. The Ombudsman is appointed by the Legislature. In my view, she is the servant of the Legislature and the committee is the representative of that Legislature. That's my own view of the relationship between the Legislature, this committee and the Ombudsman.

I believe, however, that there are things this committee should not ask of the Ombudsman. I believe they should be very, very cautious in going behind her decisions on cases in which she does not support the complainant. I believe that this Ombudsman is a last resort and that there can only be so many last resorts. Especially, I think, in a period of fiscal restraint, we ought to be trying to put our resources to the best possible use and we have to be careful that we don't give the squeaky wheels all of the grease.

I think the Ombudsman acts as the last resort for complaints. Most of these people will have had access to a number of other appeal mechanisms. In fact there's some question about the extent to which the Ombudsman should exercise her discretion perhaps not to investigate cases in which people have had a dozen different review processes. But certainly when he or she comes to a conclusion that a complaint is not supportable, I think this committee can review the process the Ombudsman uses to look at complaints, but I think it should be very, very careful about going behind the decision the Ombudsman has made.

I'm sure that all of you as members have had the experience of dealing with complaints from your constituents which you just cannot fix, not because you don't feel very, very badly for your constituents' position but because there isn't a right answer that they will accept. I think it's to your advantage, as legislators and as MPPs who have a constituency to serve, to have a place you can send those people and say, "This person will look fairly at your complaint, but when they're finished with it, that's it."

You'll see that in my view that's a very different thing than assisting the Ombudsman with recommendation-denied cases, which I think is a quite different role, a role in which she's bringing forth a concern she has about the way the bureaucracy has dealt with your constituents and in which you might be able to assist her.

If you reviewed her process and were concerned that there was some flaw in the process, I think at that point it would be a matter of discussion with the Ombudsman about the process. It's possible that the Ombudsman, becoming aware of the flaw, might say: "I think I want to go back and have another look at that problem. That's a problem I didn't see myself." That's not to say that you're saying the decision was wrong. I think you're saying perhaps that



there was some kind of procedural mistake in the process. But I don't think you should ask that the Ombudsman change the result of a complaint which has been found not to be supported.

I think it's also very easy to underestimate the value to the bureaucracy of having an Ombudsman there to review decisions that are right decisions. In my experience with the Ombudsman's office, the bureaucrats were often very grateful for guidance in compliance with various mazes of reasonableness and new ideas about equity and that sort of thing. Our ideas about these things change as we go, and sometimes the bureaucrats feel they are assisted by the Ombudsman's office in knowing what the standard of fairness and justice and reasonableness might be.

They also like to be told when they've done a good job, as most of us do, and the Ombudsman, in many cases, finds that in fact the organization has done a good job. I think it's an important thing for people to have that said to them when it is true.

I think also it's easy to underestimate the value to complainants whose complaints are not supported. I had many complainants when I was an investigator, who would, having received a non-support report, call me up and say: "Thank you very much for explaining that so clearly. I now understand why the decision was made the way it was. I don't like it, it's not what I wanted, but I now understand the process this goes through, and I appreciate your having taken the time to look at my case." Again, I think that is a very valuable service.

I think the Ombudsman has another role, and that's the role of an employer. That's another area that causes some difficulties. The difficulties arise for a number of reasons.

One, every institution has disgruntled employees. I don't think anyone can think of a place he has worked where everyone was happy all the time. There are bound to be people who are not happy with their work in the Ombudsman's office, and those people may see this committee as something to turn to if they're not happy. In my view, that's not an appropriate role for the committee. I believe the Ombudsman to be the employer, the manager in the office. It's very difficult to manage in those circumstances, I'm sure some of you would recognize.

There is—at least there was, and I believe it's still in place—a grievance in place in the Ombudsman's office, and it's a very thorough grievance procedure. I think it's the place for employees who have employee-related problems with the office. I also think that staff turnover in itself is not necessarily a symptom of problems in the office. The Ombudsman's office attracts a very interesting group of employees, people who are committed, people who want to do good, people who are willing to work hard to do the kind of work which is very idealistic, if you like. The staff was always a matter of great pride to the office when I was there, and I think still is.

It's a very difficult kind of work because you're dealing with complaints which can get very tiresome, dealing day in and day out with people who are unhappy about something. But the staff does an excellent job, and I think they are the kind of people you would expect to be interested, lively and therefore likely to move on to some-

thing else after they've done it for a while. They get tired of dealing with complaints, perhaps, but, more than that, they're intelligent, interested, exciting people, and I think there's nothing sinister, necessarily, in seeing that there's turnover in the staff. If everybody up and left or there were vast numbers of people leaving, that might be a token of something different, but I think it's a mistake to think that a high turnover is in itself evidence of difficulties.

1430

The employees of the Ombudsman may have very high standards with respect to labour relations because they investigate employment complaints, they know what the rules are. They're going to be pretty demanding employees. In fact, they are pretty demanding employees, in my experience, and therefore they require a very specific type of what I would consider to be careful management. But this committee shouldn't try to replace that management by trying to make those decisions for the Ombudsman.

There's another kind of complaint you might get that I think might be different. If you had a large number of complaints about the office's role from employees, who are, after all, on the inside track about the office in general, that they felt there were problems with the office, and you couldn't see behind these the disgruntled employee—I mean, I think you can tell the difference between someone who's criticizing because he's an unhappy employee and someone who is worried about the way in which the office is operating as a whole.

If you got a lot of those complaints, I think you might want to talk to the Ombudsman about them. I don't think that means you want to call her on the carpet and say: "What's going on here? This is causing us all kinds of concerns." But the employees, after all, are in a very good position to know how the office is operating. While I would caution you against getting at all involved in managing the employment situation at the office, I think you'd have to be sensitive to a large number of concerns about process. I'd say very strongly that it would be an unusual situation where that would occur and one which should be dealt with very gingerly. Again, not being there, you ought to give the Ombudsman the benefit of the doubt and try to find out what's going on without assuming that there is a problem.

I think the other area of decision-making or area of responsibility of the Ombudsman which causes some people concern is the question of budget and budget reporting. I believe the Ombudsman really does require the independence to do the job that's given to him or her. They need to be seen as a separate organization with independent ability to make decisions. They have to get paid and they get paid out of the public money. I think you have to, to some extent, trust the Ombudsman's judgement on the whole in money matters. That doesn't mean you would put up with gross negligence or some abuses of spending, but there are mechanisms already in place, in my view, to review the Ombudsman's expenditures. I believe if this committee is to do its job in helping with the complaints process, then it ought to stay away from the money process, because there's too much possibility of conflict, in my view.



This is not to say that the Ombudsman doesn't ultimately report to the Legislature. The term of office is set by the Legislature. There is a provision for dismissal of the Ombudsman for cause, but that is intended, in my view, to be an open and honest process; if, in an honest assessment, the Legislature felt it was necessary to do such a drastic thing—which I think would be practically unthinkable, but if that were the case—it would be done in an open and honest way, not behind closed doors, not through coercion through the control of the purse-strings and not through trying to review the way in which particular complaints were handled.

This brings me to my last point, which is the point about the appointment of the Ombudsman. This is not to say anything about past incumbents or the present incumbent in the job, but I think the process for appointing the Ombudsman could be improved. I think it should be improved for a number of reasons. One is that we are now, in this society, more critical of under-the-table or back-door appointments. We like to know that appointments are being made openly and honestly in general.

An open and competitive process would ensure that the person who is appointed has the skills necessary for the job and could then be trusted to do the job. I think you would be more confident to sit back and trust the Ombudsman's judgement and process if in fact you had witnessed an open and careful process in which the Ombudsman was chosen. That's not to say that the present Ombudsman or ones previously have not had all the skills necessary for the job. It's just hard to know that in advance, and I think an open, competitive process might assist with that.

In the same way, complainants might be much more satisfied with the answer they were given if they were assured, through their knowledge of the way the Ombudsman is appointed, that the person was not just a party hack but that this person had skills for the job and had the background to do the work and was good at it. It's a very important job. It has a high public profile and needs someone who's very good at appearing in public and being able to answer questions and who is generally quick-witted, knowledgeable and fairminded.

Of course that would give you as a committee a better idea, reviewing any complaints you had, about whether the complaints were justified. If the person has been chosen through a fair and open process and you have a great deal of confidence in his or her integrity, then you can quite often say out of hand that complaints that come to you just could not be true. You would just have confidence that this person would not do petty things.

Those, in general, are my comments. I'd be happy to answer any questions you have, with the proviso that, as I said, I really don't know anything about the current situation in the office. I'm not prepared to provide any opinions on that, because they would be ill-informed opinions. But I'd be happy to answer or try to answer any questions you have about what I've said.

**The Chair:** Thank you very much for that presentation. Comments or questions?

**Mr Ramsay:** Ms Morrison, thank you very much for coming before us today. It was very informative. Your description on our committee agenda states "former director of investigations, Office of the Ombudsman." Could you give me a brief history of your time there, how you started and when, and then subsequent jobs you had, if any, leading up to the chief investigator?

**Ms Morrison:** Sure. I was called to the bar in 1982 and went directly to the Office of the Ombudsman as an investigator. I was an investigator—I don't have my CV with me, so I'll have to make some guesses at this—for about a year, I think, and then I was made counsel to the Ombudsman. There was a group of people who provided legal counsel to the Ombudsman at that time. I was in that position for maybe eight or nine months, and an opening for assistant director of one of the teams of investigators came up. I applied for that job and held that position until 1985, when the former director of investigations left and I was asked to be the director of investigations. I was the director for four years. The very last position I held there was the combination of director of investigations and legal services.

**Mr Ramsay:** When did you leave?

**Ms Morrison:** I left two years ago now.

**Mr Ramsay:** From that tremendous grounding in that office and your experience, you could really offer us a very unique perspective as to the different styles of how the office operated under the various tenures. Do you have any observations of that, without even naming people, but just giving a sense of how the styles maybe have changed, how the operation changed, in regard to investigations?

**Ms Morrison:** I think each Ombudsman brings his or her own special skills and special interests to the job. I think the first Ombudsman who was there when I began at the office was Mr Morand, who I think spoke to this committee.

**Mr Ramsay:** Yes, he did.

1440

**Ms Morrison:** As a judge he had a sort of judgelike way of approaching the job, perhaps a little more inclined to the legal end of things than otherwise, but there's a lot of legal work to do in that office, so that's not to say that's not an appropriate way of dealing with it. Of course I think with all the ombudsmen, with Mr Morand and with subsequent ones, they tend to get staff to kind of balance out their own point of view, so while he might have taken a more legal view of matters as the Ombudsman, I think the staff was balanced in a way that brought forward the other aspects in the complaint process.

Dr Hill was very interested in ensuring that complaints were resolved, if possible, without a long, complicated process. He was interested in taking a systemic approach to complaints, which was kind of the way in which ombudsmen's offices were evolving in many areas at that time. He was very interested in making sure that the Ombudsman's presence in other parts of the province was felt. As the Ombudsman's office kind of grew in its confidence in its process and procedures here in Toronto, I think the



opportunity for having it spread across the province, for it being more present in smaller areas, was appropriate at that time, and that was put into place.

I worked very briefly with the present Ombudsman and I guess I don't have a very clear sense of any specific style that she brings, although she's a very good public communicator. From the few times I saw her communicating in public, I think she presents a very strong and interesting view to the public of the Ombudsman's office and I think is very committed to that approach.

**Mr Ramsay:** Your observation about Dr Hill's style being one who wanted to resolve systemic deficiencies in the system I think is interesting, and it relates to my next question.

You made an observation that one way this committee could be most helpful to the Ombudsman would be on assisting, in this case her, on the recommendation-denied cases, and I agree with you. One of the difficulties this committee's had is that we haven't had any of those referred to us in the last two years. Obviously from that I would take that this Ombudsman doesn't work in that sort of style of trying to resolve systemic problems, because I think that's really what the office needs to do too. I don't see it as an office that just continually works case by case. Obviously, as you start to accumulate cases, you start to see patterns, you start to see deficiencies.

I'd like to fix the problem at the root. I think that's the way to proceed. Would you have any recommendation for us how maybe we could encourage the Ombudsman to act like that, to bring forward those deficiencies she has observed so that we could help her in resolving those so that also we can fix the system and reduce the case load?

**Ms Morrison:** I should maybe clarify a couple of things. My use of the word "systemic" might be a bit confusing. The recommendation-denied cases are often individual cases and not cases which involve a lot of people, although they may indirectly involve a lot of people because they may make a recommendation which ultimately changes the law for a number of people, but they're often individual complaints as well. Systemic investigations may never result in a recommendation-denied case, because having found a systemic problem, the Ombudsman is quite likely to find the governmental organization anxious to fix it, especially if the Ombudsman can suggest ways in which that might be reasonably done. So you wouldn't necessarily get systemic cases brought as recommendation-denied cases.

The other thing I should clarify is that the number of recommendation-denied cases that come forward is a very chancy kind of thing. In the years I was there we sometimes had 10 and we sometimes had two or one. I don't think we ever had none. But it depends on a number of things. It depends on whether the governmental organization resists the recommendation, and that's not a predictable thing. Sometimes they will do what is recommended and then the case doesn't have to come forward.

I don't know why there haven't been any recommendation-denied cases. Maybe the government's working so beautifully, the bureaucracy is just doing everything so well, and

when they're not doing things so well, maybe they're fixing them as soon as anyone tells them they're not doing it well, which would result in no recommendation-denied cases.

I think the resolution of complaints by the Ombudsman sometimes can be problematic in the sense that if a person has a legitimate claim, I'm hesitant to see it compromised too much for the sake of settling the case; that is, I don't necessarily believe that you should go all the way to the committee for \$10. On the other hand, I think if it's pointing up a deficiency in the way things are done, it's important to get the deficiency fixed, not just pay off the complainant, so to speak. So I guess I'd be concerned if I thought compromise was too heavy a factor in the lack of recommendation-denied cases, but of course I have absolutely no information on that.

**Mr Ramsay:** Just one last question. You talked about accountability, you talked about staff management and how there's a staff grievance procedure there and you went so far as to say that we could be of assistance in helping the Ombudsman resolve cases, but as far as the day-to-day management and money matters, you said we should not be interfering.

We're having a little problem here of how, without stepping on the Ombudsman's toes, we can make sure that through our committee for the Legislature there is some public, fiscal accountability. Being such a massive operation, costing \$9.4 million, how can we assure there is good management? If you start to hear that not only is there staff turnover because they're very bright and interested people but that there are a lot of wrongful dismissal cases and there are extra lawyers being hired on to handle that sort of case load and therefore focus is starting to move towards internal management rather than case load resolution—there's got to be, we would feel, some sort of mechanism for us to ensure that things are working well, that the money is well spent and that \$9.4 million primarily is being geared towards resolving problems for the public.

**Ms Morrison:** The Ombudsman is subject to audit, and an audit is a valuable tool. I think the explanation of the Ombudsman's requests for budgetary allocations must go through the usual budgetary process and there they have to say in advance what they need for various types of expenditure. I think there are mechanisms in place that keep people honest.

Certainly in my experience at the Ombudsman's office we were very careful about the budget for the reason that we felt publicly accountable through those processes and for the reason that the Ombudsman has to be like Caesar's wife. We did criticize other governments for decisions they made about expenditures, as in other things, and for that reason you're very careful that you're not doing something that you would tell someone else not to do.

The same is true with employment generally. The Ombudsman, as I say, investigates other people's employment practices and therefore has to be pretty square.

If you're going to help the Ombudsman, as I think you can, with the complaint process, with the recommendation-denied cases or in general provide the link between the



Legislature and the Ombudsman, I think having fiscal control is too much, because I think people have to see her as able to criticize, and there's nothing like purse-strings to make people think that someone has not supported their complaint because, "They didn't dare support my complaint because they would have cut her off; she wouldn't get any more money from them." It's important to you, I think, that the citizens out there believe in the process. They won't believe in the process if they think there's any possibility that supporting their complaint or not supporting their complaint is going to be a matter of next year's budget. So that's my view.

1450

**Mr Murdoch:** I just want to thank you for coming. It's interesting talking to somebody who has already been there. We need to know these things.

I had a couple of questions, but David asked one of the ones on fiscal responsibility. I was going to ask you where, then, fiscal responsibility would lie. I'm not saying we should scrutinize the budget, but what if during the year, as it's been raised in the House, there's been maybe money spent frivolously on something that wasn't that important? Where's the mechanism for somebody to check that? It comes to this committee. Could we not have at least the authority to ask to find out, if there's a question raised, why this money was spent on a certain thing? Could this committee not at least have that authority to ask why this has been done? There's got to be some accountability somewhere.

**Ms Morrison:** That's a very hard question, because the way I see it, if you have the authority to ask, you have the authority to get the answer. That's not to say that I don't think there should be much closer communication between this committee and the Ombudsman. In the past I often had members of this committee who would call me up as director of investigations and say: "I have someone here who is complaining about such-and-such. I don't know whether your office can help them. Can you tell me whether that's something you do?" We were on enough of a basis that they felt comfortable coming to the office.

On a number of occasions we had seminars for members of this committee where they came to the office, we went through our whole investigative procedure, showed them what we did, showed them our referral manuals and how we dealt with complaints of various kinds, introduced them to the staff and so on. I think there should be a relationship between the Ombudsman and this committee which is one in which you know what she's doing and she, or he, has given you information about things. But if I say, "Well, yes, you should be able to ask," I see that in the sort of context of she might be wanting to tell you these things and not that you would have the authority to require it. I think that's where it becomes kind of controlling. I know that's a hard line to draw.

For example, I think the expansion of the office into the regional areas was a matter of great pride at the time it was getting done, and it got some criticism. There were people who said, "We don't need to spend money on put-

ting an office in"—I don't where. But nobody had to go and ask the Ombudsman about that.

**Mr Murdoch:** I'm sure that was probably in the budget. I mean if money is spent that wasn't in the budget. Maybe it was, say, under advertising; it would say it's under advertising. So advertising had X number of dollars but didn't really say where it was going to go. All of a sudden there is a big advertising campaign. Questions may come to this committee because people feel, "Well, you're the Ombudsman committee; you should know." We would all of a sudden have this question, and we wouldn't have the answer because we wouldn't know why it was there.

The crux of the whole thing is that we've got to have a better relationship with the Ombudsman's office. That seems to have been lacking in the last two years. I don't know whose fault it is. So we can't answer now because we don't have a chance to. I think we should have the right to sit down and talk about it so that we can, then, defend the Ombudsman and the Legislature, because that's where the questions come up. They look at us as a committee, and we don't have the answers. So there's got to be some more interaction, and that's maybe what's been lacking.

That goes to my second question. You mentioned how we should work with the Ombudsman to help cases where, say, she's not getting anywhere with a ministry or something, so we support her and help her get that through. On the other hand, it could be a case that's been denied, which is fine; that's the decision of the Ombudsman. But that same person may come again to this committee and have a complaint, like saying, "Why did it take two years to get that decision?" Or there's a decision that's pending, and it's been three years, so this committee would send a letter to the Ombudsman's office saying: "Here's a case. Why is it taking two years? Why is it taking three years?" In the same respect that we're going to help over there, they should help us with some information so that we can get back to these people. That hasn't been coming, so don't you think there's a big problem?

**Ms Morrison:** Yes. Delay in responding to complaints has always been a problem, in the sense that people have not always understood how long it takes to go through the formal processes of an Ombudsman's complaint. I think there hasn't been a year in the history of the Ombudsman's office that someone hasn't said it's too slow, and this with all kinds of case management and computers and all kinds of things. I think you will get those kinds of complaints.

**Mr Murdoch:** I can understand that, but it's nice for this committee to be able to answer the people who come to us and ask, "Why is it taking so long?" We can't answer for something we don't know, so we need to have that interaction.

**Ms Morrison:** That's right. That's why the interaction is so important, because I think, on the whole, you would find your role would be one of supporting the Ombudsman if you had the information upon which to do that.

**Mr Murdoch:** I would hope so. That's why I'm saying the same with the budget. If we're more involved in it somewhere along the line, then we can support, when it



comes in the Legislature, why so much money is being spent. We sit there and look at each other, and we don't have any idea and we can't even find out.

**Ms Morrison:** Well, in the first instance, when the Ombudsman puts the estimates forward, there are questions about the appropriateness of spending money on this, this and this.

**Mr Murdoch:** I realize that.

**Ms Morrison:** Once that's done, I think to some extent you should back off. But yes, there will be questions. People used to ask questions like, "Why are there cars that the Ombudsman's staff use on investigations?" We did a very thorough study of whether we should rent cars or own cars—not own, but have cars through the government way of doing it, so to speak—and what was the best all-around thing for availability, for cost, for all this kind of thing. People come and say, "We want to know about that particular thing." Those kinds of decisions have got to be operational decisions of the office.

**Mr Murdoch:** I agree, but you did a study to prove that, and we should be able to say that. Politicians change from time to time, and in this committee a lot of us are new, so we don't know anything about that study and that's a question that could easily come to this committee. I know it may sound frivolous, but if we could at least send the question over to the Ombudsman's office, hopefully we'd get a reply back that a study was done and it proved most cost-effective that they rent cars or whatever, and then we'd have that knowledge. If we send a letter over and get back, "This is our business and not yours," then we have a problem.

**Ms Morrison:** That's a very difficult area. In the best of all possible worlds, I think information would be shared and there'd be no threat to anyone, but it's like anyone asking anyone else questions to which they feel they have to give the answer; then they feel they lose some of the control they have over their own process.

If you have confidence in the person who is in the job because the process of choosing has been open and your experiences with that person have been good, and you are aware of the way the office works and all of that kind of thing, then on the whole I think my answer would be to trust them.

**Mr Murdoch:** That's right and I agree with that, but there has to be a process built up. As I say, there's a lot of new people who have never worked with any Ombudsman, so there has to be some cooperation somewhere along the line for us to build up the confidence. If we always get an negative answer, it's hard to build confidence.

**Ms Morrison:** There may be some areas in which the committee can get to know the Ombudsman that are relatively neutral ground and non-threatening. I haven't really thought about it.

**Mr Murdoch:** This committee has been labelled in the media that it's trying to somehow change your decisions. I have never seen anyone here mention that at all, and I don't think we're here for that. We just want to know

how it operates and, as you say, work with the Ombudsman to make the job that much better.

1500

**The Chair:** Mr Mammoliti, you're up.

**Mr Mammoliti:** Ms Morrison, thank you very much for coming. I appreciate it. I'm glad you've decided to come and talk to us because, in my opinion, being an ex-employee of the Ombudsman, it certainly clears up some of my questions. You said, if I'm not mistaken, that you left in 1985.

**Ms Morrison:** No, I left two years ago.

**Mr Mammoliti:** So that's 1990?

**Ms Morrison:** Yes.

**Mr Mammoliti:** And you've had the opportunity to work with the previous Ombudsman as well as the Ombudsman who exists at this point?

**Ms Morrison:** Yes, I was there about eight months, perhaps, with the present Ombudsman.

**Mr Mammoliti:** You talked a little about the role of the committee, in terms of grievances from staff and turnover and how you felt that the committee shouldn't intervene or look at the situation, and you talked about the effective grievance procedure that exists within the office. I'd like to ask you a couple of questions in light of that: While you were there, were you involved with the grievance procedure at all?

**Ms Morrison:** Yes, I was.

**Mr Mammoliti:** In what capacity?

**Ms Morrison:** The grievance procedure was developed during the years in which I was in management in the Ombudsman's office, and it was developed through a committee of employees and management. I was involved on that committee.

**Mr Mammoliti:** It's my understanding that at that time, employees would have a say even when it came to policy and they'd have the ability to talk about the problems that exist within the office and talk to the Ombudsman himself or herself when this would happen. That open-door concept was there, was it not?

**Ms Morrison:** I think the whole office operated on a kind of open-door concept, but when I was there the office had a hierarchy: Investigative teams reported to an assistant director, the assistant directors reported to me as director of investigations. I in turn reported to the executive director for management matters and of course to the Ombudsman for complaint-related matters.

**Mr Mammoliti:** And you had—I'm not too sure what it was called—an employee assistance committee of some sort?

**Ms Morrison:** The employee relations committee.

**Mr Mammoliti:** Employee relations committee. That would deal with the problems and any complaints the employees would have?

**Ms Morrison:** That was one of the committee's jobs, yes.

**Mr Mammoliti:** And one of their particular jobs was not only to deal with grievances but to have input on policy and some of the more responsible decisions that were made in the office. Am I right?

**Ms Morrison:** Yes, related to employment. The employee relations committee was related to employment, not related to complaint-handling in the sense of the decisions on complaints. Those were made through team meetings and so on.

**Mr Mammoliti:** What about decisions that were made in the office itself?

**Ms Morrison:** For example?

**Mr Mammoliti:** Where a garbage can would go or how you would deal with, say, replacement workers or that sort of thing. Would they have input at that time with decisions such as these?

**Ms Morrison:** A lot of those questions were dealt with as part of the grievance procedure discussions in terms of surplus policy and that kind of thing and were part of the discussions that led to the grievance policy, which was a joint committee of management and employees. Decisions about who got what office and that kind of thing would often be—

**Mr Mammoliti:** I'm not talking about actually making the decisions; I'm talking about input on those decisions.

**Ms Morrison:** Input on those kinds of things came in a number of ways. It came through team meetings where people could express to their assistant director or, through that person, to me—I often went to team meetings as well—their concern about a particular thing that was happening or about communications in the office. In a big office like that, keeping everybody informed of everything is a really high priority. The team meetings, the employee relations committee, just informal communication, I think were important.

**Mr Mammoliti:** There was a time in that office when communication was good, and perhaps it could have been as early as two years ago.

**Ms Morrison:** In my experience, the employees at the Ombudsman's office have never been shy about coming forward with their concerns. I think they tend to communicate pretty well; they're pretty effective communicators.

**Mr Mammoliti:** With the new Ombudsman now, in your brief experience in working with her, did she change any of those communication patterns, perhaps, that existed within that office, and, if and when she changed them, did some of the employees come out and talk about the effect it would have on the office?

**Ms Morrison:** I can't say I know what you're referring to. There were changes in the office in the sense that, for example, my position became one in which I was a supervisor of both the legal services area and the investigative area. Obviously, a change of management of that kind changes the access people have. In the end, that would work out in a different way, but I don't think it was any worse. Certainly there were no "Thou shalt nots" that I know of, not at all.

**Mr Mammoliti:** No memos circulated saying: "In previous years, we've been accustomed to such and such in this office. As of such and such a date, this will no longer be the case"? There were no memos issued in that regard?

**Ms Morrison:** Not that I can recall.

**Mr Mammoliti:** Not to your knowledge. Are you aware of the fact that the assistance committee that exists right now for the employees—it seems from what I can gather in talking to some of the employees that a lot of them want to resign from that committee because it's not effective.

**Ms Morrison:** I'm really not aware of what's going on there.

**Mr Mammoliti:** You're not aware of that, so there's no point commenting if you're not aware of it.

The turnaround time isn't the only reason this committee is looking at the internal goings-on, perhaps, in the Office of the Ombudsman. A number of complaints have come out of that office, and some of them very consistent. For that reason, some of us have decided to ask some questions. I think that's the role of the committee, so we're going to disagree on that. You said it wasn't and I think it is.

One allegation is that 80% of the employees who exist there now, out of the 129, are looking to leave as quickly as possible, and that's because of the low morale. I think that reason and that reason alone would warrant this committee asking some questions. I'm not too sure whether you've heard the statistic, but as soon as I heard it, of course my eyebrows rose and I wanted some questions asked. That's the reason behind us looking into it. Whether or not you change your judgement on us in this particular case is up to you.

Are you aware of any employees being harassed on site by the managerial staff or the Ombudsman to the point where they're having to resign?

**Ms Morrison:** Not at all. I have no personal knowledge of how the office is operating at the moment. I just have no information at all about that.

**Mr Mammoliti:** So realistically, you can't tell us whether or not the grievance procedure at this point is working?

**Ms Morrison:** Not at all.

**Mr Mammoliti:** Were you involved at all with the London office?

**Ms Morrison:** Not particularly. My area of responsibility was really investigations, case management and legal services. I of course cooperated with the people whose job it was to make sure that the regional presence was working. I often spoke to the regional conference and I would contact the people in the regions when necessary, visited them in some cases, but I wasn't specifically responsible for that area.

**Mr Mammoliti:** Were you aware of any employees who were off on stress-related illnesses or perhaps a high rate of absenteeism?

**Ms Morrison:** No, I'm not.



**Mr Mammoliti:** You weren't aware at that time of any?

**Ms Morrison:** No.

1510

**Mr Mammoliti:** Was it a problem at that time?

**Ms Morrison:** Not that I recall. I don't recall anything of that sort at all.

**Mr Mammoliti:** So at that time the turnover rate, in your opinion, wasn't due to the stress or the low morale, perhaps, that we're hearing about at this particular time?

**Ms Morrison:** I think we had a quite normal turnover rate while I was there that you would expect and that of course you would be sorry for, because always your very best people find jobs elsewhere. Not always. Lots of them are quite happy with the work they do and are content there.

**Mr Mammoliti:** How long did you work with the current Ombudsman?

**Ms Morrison:** About eight months, I think. I don't remember the exact date of her appointment.

**Mr Mammoliti:** And before she came on board, it seemed to be an okay office to work for? There wasn't a problem with morale?

**Ms Morrison:** I always loved my work at the Ombudsman's office. I never found it a bad place to work.

**Mr Mammoliti:** When you were there, there didn't seem to be a problem with morale and the staff were pretty happy?

**Ms Morrison:** Yes.

**Mr Perruzza:** Thank you for coming today, Ms Morrison. I'm a new member of this committee, and just to get a little background and a better understanding of what the Ombudsman actually does, you said you started working for the Ombudsman in 1982?

**Ms Morrison:** Yes.

**Mr Perruzza:** As an investigator.

**Ms Morrison:** That's right.

**Mr Perruzza:** In your experience, what types of cases has the Ombudsman—I guess what I'm trying to get at is if there's been sort of some evolution in the office and in the kinds of work the office has done over the years. In your opinion, what types of cases does the office deal with? I know that's a very general question.

**Ms Morrison:** Over the years I was there, there was some evolution in the types of cases the Ombudsman had, for a couple of reasons. One was that there was a great change from the early days, when a vast number of the cases were workers' compensation cases. The Workers' Compensation Appeals Tribunal was put into place. That made a difference in the type of case the Ombudsman had. I think there was a large reduction in the number of workers' compensation cases we dealt with and probably more emphasis put on some other kinds of cases as they came up.

There were new ministries. For example, there didn't used to be a Ministry of the Environment, so obviously

you didn't get any complaints against it. Once you have one, somebody will find something wrong with it.

The office used to handle complaints from inmates of the correctional institutions in a different way at one time and that process evolved. I'm not sure what the process is now, but we went through a number of different ways of dealing with corrections complaints, trying to make sure that they got the right amount of attention but didn't overwhelm the office. There's such a difference in that kind of complaint from all other kinds of complaints that the office gets. People who are deprived of their liberty find that small things are very important to them. I think we agonized about how important they were and how much of the Ombudsman's time should be occupied with complaints from the correctional institutions. What was the best way to deal with them? Should we have people out on the sites all the time, ready to take complaints, or should we make them write complaints in like everyone else? That's been an area of the office which has evolved under different ombudsmen. Different techniques have been tried, more to try to get the right balance between the attention given to those complaints, which are multitudinous, and other kinds of complaints.

I think over the years we got a number of huge investigations, which always cause a kind of perturbation in the office, if you like. You have to put a certain number of people on to a case which involves a lot of complainants, like the Argosy case, for example, which was reported to this committee at one time.

**Mr Perruzza:** The which case?

**Ms Morrison:** Argosy. The financial collapse in which a lot of people lost money. Those kinds of complaints tended to have to be dealt with by a specific team put on to doing it so that it could be done in a reasonable time, and that will change the whole rest of your arrangements because you have to get those people from somewhere.

You probably noticed that the number of staff in the Ombudsman's office has not really changed over the years, although the bureaucracy has grown and the number of complaints has gone up. A lot of adjustment always had to be done to make sure you could do the work with the people you had, and I'm sure they're still doing that.

It has changed. It changes with new governmental organizations, it changes with new kinds of complaints. Those are the kinds of changes I've seen.

**Mr Perruzza:** You just mentioned that the number of cases has actually gone up. In your estimation, when you started in 1982, how many complaints and how many cases would the office actually take on, and in 1988, what would be the number?

**Ms Morrison:** I don't have those statistics at my fingertips, but it's my recollection that the complaint numbers went up steadily for a few years and then increased less quickly over the later years. But there's a bit of mystification there because the Ombudsman gets a lot of complaints which are non-jurisdictional, as we used to call them, which are really things that were not necessarily supposed

to be dealt with by the Ombudsman's office. How you count those changes the total you report.

It's a very difficult question, because in some ways you should not discount them because you often help people a great deal in those areas, even though it's not your business to do that. So you would like to count them in the way that you say, "We helped this many people this year." On the other hand, they were complaints outside the Ombudsman's jurisdiction. There might have been people who needed to know where to go for something to do with the Metropolitan services or they needed to have some referral for a federal matter, and you helped them find the right place to go. You maybe even called the person up and said: "I'm referring this person to you. Can you make sure you find out what the problem is for them?" You end up doing a lot of good for those people, so you want to report those cases because they reflect the work you do, but where should they go in your statistics? So the statistics are very difficult to analyse and get the right picture of how much work goes on there, I think.

**Mr Perruzza:** To understand this, I always thought that "complaints" meant the number of complaints that are simply received, but what you're saying is the complaints are actually written submissions or phone calls that are received by the office that are dealt with in some way by the office. Just to be a little clearer, you get a complaint from a school board or a municipality which is not within the jurisdiction of the office. Is that registered as a complaint received, even though you write back a note saying, "No, we can't deal with this because it doesn't fall within our mandate"?

**Ms Morrison:** It is, but it's reported differently from a complaint that is within the Ombudsman's mandate—at least it used to be. I haven't seen the way they're reporting complaints these days, but we used to divide them between what we called jurisdictional complaints, ones that were within the Ombudsman's jurisdiction, and non-jurisdictional complaints.

That didn't mean we didn't help the non-jurisdictional people. We tried to do what we could to get them into the right stream, if you like, but they weren't matters that the Ombudsman could investigate. So the jurisdictional complaints were really complaints which could be investigated or dealt with within the Ombudsman's mandate.

**Mr Ramsay:** I just have another question to ask you and it's with regard to cases that have been brought to our attention by the public. When I look over the past history of the working relationship between the Ombudsman's office and this committee, there seems to be a fairly good

relationship in trying to resolve those complaints that come before us.

What we're finding now is that we are getting responses back from the Ombudsman saying that because of the confidentiality of the cases she cannot give us any sort of information, even to the point of answering a question of why it's taken two or two and a half years to deal with a case. I certainly find that an extremely strict interpretation of the act, when somebody from the public who has had a case dealt with by the Ombudsman's office is actually asking for some assistance, asking us to investigate this particular handling of that case, and therefore has given permission basically to look at any information that involves him with regard to that case. How would you suggest that we get that relationship back on track with the Ombudsman, that we can be seen as a team working well together on behalf of the people and fulfilling our role just to make sure that the job is being done?

**Ms Morrison:** I'm not sure what I'd suggest, although I think something I said a little bit earlier in response to a question, just was the thought that there may be some fairly non-threatening area in which you could learn about the Ombudsman's office or about the processes and which you could use to establish some kind of ongoing relationship.

I think the question of complainants' files is a difficult one. They are confidential and the office is very careful about confidentiality, for good reason I think. But if a complainant is coming here with the letter that he or she wrote to the Ombudsman, he or she is giving you the information; and, in my view, that's open to them to do that.

I'm not sure what to suggest. I am of the view that this committee could be of assistance to the Ombudsman, so I personally would like to see the relationship between this committee and the Ombudsman be a constructive one. But, as I say, I'm not in possession of the information about the present situation which would allow me to make any comments about the rights and wrongs of it, except to say that I really wish it were better.

**Mr Ramsay:** We do too, and in the workings of this committee, in the next few days and into the new year as we work through this fall, I hope that can be made to happen.

**The Chair:** Ms Morrison, thank you very much for taking the time out this afternoon to come in and give us that fine presentation.

**Ms Morrison:** Thank you.

**The Chair:** Seeing no further business before us, this committee stands adjourned until 10 am tomorrow morning.

The committee adjourned at 1522.



## CONTENTS

Wednesday 26 August 1992

<b>Review of Office of the Ombudsman</b> . . . . .	B-75
Ontario Separate School Trustees' Association . . . . .	B-75
Mary Hendriks, president	
Patrick V. Slack, executive director	
Gail Morrison . . . . .	B-86

### STANDING COMMITTEE ON THE OMBUDSMAN

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- \* **Vice-Chair / Vice-Présidente:** Haeck, Christel (St Catharines-Brock ND)
- Akande, Zanana L. (St Andrew-St Patrick ND)
- Drainville, Dennis (Victoria-Haliburton ND)
- Duignan, Noel (Halton North/-Nord ND)
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- Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
- \* Miclash, Frank (Kenora L)
- \* Murdoch, Bill (Grey PC)
- \* Perruzza, Anthony (Downsview ND)
- \* Ramsay, David (Timiskaming L)
- Witmer, Elizabeth (Waterloo North/-Nord PC)

#### **Substitutions / Membres remplaçants:**

- \* Curling, Alvin (Scarborough North/-Nord L) for Mr Henderson
- \* Hansen, Ron (Lincoln ND) for Mr Duignan
- \* Harrington, Margaret H. (Niagara Falls ND) for Mr Johnson
- \* Klopp, Paul (Huron ND) for Ms Akande
- \* Mammoliti, George (Yorkview ND) for Mr Drainville
- \* Owens, Stephen (Scarborough Centre ND) for Ms Haeck

\* In attendance / présents

**Clerk / Greffier:** Carrozza, Franco

**Staff / Personnel:** Murray, Paul, committee counsel and research officer, Legislative Research Service



B-7

B-7

ISSN 1180-4300

## Legislative Assembly of Ontario

Second session, 35th Parliament

## Official Report of Debates (Hansard)

Thursday 27 August 1992

### Standing committee on the Ombudsman

Review of Office  
of the Ombudsman

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Jeudi 27 août 1992

### Comité permanent de l'ombudsman

Examen du Bureau  
de l'ombudsman



Chair: Mark Morrow  
Clerk: Franco Carrozza

Président : Mark Morrow  
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### **Table of Contents**

Table of Contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

### **Index inquiries**

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### **Table des matières**

La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Thursday 27 August 1992

The committee met at 1011 in room 151.

### REVIEW OF OFFICE OF THE OMBUDSMAN

**The Chair (Mr Mark Morrow):** We're here this morning to discuss the review of the Office of the Ombudsman, as a motion was passed in the House July 23 allowing us to do so.

JOHN P. KRUGER

**The Chair:** This morning we have appearing before us John Kruger, chairperson of the Ontario Municipal Board. Good morning and welcome. I would appreciate it if at the end of your presentation you would allow some time for questions and/or comments. Begin when you will.

**Mr John P. Kruger:** I thought it might be beneficial to you to leave most of my appearance here to questions, because you've got all your research in front of you and no doubt there are some pertinent questions you'd want to ask.

I've only got four very brief comments to make. With regard to the Ontario Municipal Board and its relationship with the Ombudsman, we have no problems with that, because as an adjudicative board, we are not a regulatory board. If an individual is aggrieved with any of our decisions—well, I think it's fair to say that anyone who loses before the OMB is aggrieved, and they have a whole series of ways in which they can get redress, as they see it in their own eyes.

It's very common for us to get letters from the local councillor, from the mayor, from MPPs, and these are not letters telling us how we ought to have decided the case but on behalf of individual constituents. I guess the elected officials also act as a form of Ombudsman. We get many letters if people are aggrieved. They send the letters to the minister, and just more recently they have been sending them to the Premier.

We also have in our act, the Ontario Municipal Board Act, in section 43—because a body such as ours is very similar to the courts: We hold hearings, everything is done under oath, we take evidence as cross-examination, and finally we are obliged to render a decision in writing that's appealable to the courts on a question of law, or it's appealable back to the board. Under section 43 of our act, we have the right to alter, revise or to do anything with the decision. We get a lot of requests where people feel aggrieved, and it will come back to us. Most of the letters I get from elected officials and from the individuals themselves say, "I think you ought to take another look at this." We will then, if necessary, make a motion to hold another hearing if, under the narrow limits of section 43, we feel they have been aggrieved.

The Ombudsman, of course, has looked at some of our decisions, not from the point of view of the veracity of the decision but perhaps of process. The only thing I can recall

where the Ombudsman and our board have come into some dialogue has been over this question: We don't have enough members, and I try to keep the backlog down but I've got to have two members sitting on a hearing. They raised the question, what if they can't agree? I said, "When that happens, then let's talk," but in the meantime they generally do agree.

So as far as the Ombudsman's role with the board is concerned, it's somewhat like a PR exercise. If a person is aggrieved, all our records are public, everything is public, and any complaint goes right into the public record. In fact, if an individual complains about the evidence of some other witness, then that's all on the public record.

As far as systemic reviews are concerned, as a board we're subject to internal audit. We're not frightened by that, because they merely look at financial matters, structure, things of that type. Nobody ever looks at our decisions, and we've been a board that's been around since—well, 1932 is the genesis of our board in its present form. There is no interference with any of our decisions.

We are subject to the Provincial Auditor, who can come in, and generally that is also dealing with structure, financial matters, making sure that we do indeed comply with regulations and so forth.

We're subject to appearance before the public accounts committee and we're subject to appearance before the committee dealing with agencies, boards and commissions. They all have a lot of questions, and we have no problem with that. I've never encountered any case where any elected official, ever, has questioned the fact that we have a decision and we've made that decision and that we ought to alter the decision. I've never had that. In fact, if that did come, we would be the first to complain most bitterly about it. It's just not going to happen.

The recommendation-denied was a question put to us. There is no body of elected officials that should ever, in my view, review the decision of a tribunal. They have every right to question process. They have every right, I believe, to ask that that tribunal be accountable. But the way it's done has got to be very carefully thought through because, while we take a lot of power—there are about 100 acts we adjudicate and we take power from those acts—the fact of the matter is that perception is reality, and how we behave is even more important than any power we have.

Every day of my life as the chair of this board I make sure that the independence of the board is never in question. Nor have I had occasion, even though we now respond to the Minister of Municipal Affairs—we've recently brought out two decisions that rip that ministry to pieces; this is on individual cases; we weren't looking at the total thing. We were critical of the ministry, and I'm sure it did not like our decisions. But that's the independence which one has to enjoy. Now, I've heard nothing about that. I've heard a



lot of rumblings, but there would never be any question of that decision, because the perception is reality.

One of the most important things we have too is the media. If there's any decision by this board that upsets the community, you can believe it'll be in the media and we'll be questioned very thoroughly about that.

One of our biggest problems these days is under section 43 on affordable housing. It used to be that I tried having only one member on those hearings. In something like about 60% of those cases where the individual ratepayer group or community group lost, they were appealing under section 43. Then I put two members on and it dropped to 25%. If you've got two members of a board sitting there the perception is, "At least they talk to one another," whereas if you have one individual it's a little different.

The only other remark, based upon some considerable municipal experience both as an elected official—I try to not show that on my résumé when I'm applying for jobs within the bureaucracy—and also as the CAO of Metro for some 15 years, when I see a question raised about expansion of the Ombudsman to municipalities and school boards, look, that's a quagmire. I can tell you, if you ever did that, you would never have enough staff within the Ombudsman's office. There is a principle in these things that says, if you can't do it totally and properly, don't even try it, because you raise the expectation of people.

1020

We get a lot of complaints about municipal politicians, a lot of complaints. I've got two on my desk. One of them I happened to write this morning in response, where this person lost his case. He was absolutely convinced, because he ran for office and lost, that there was a vendetta against him, and this is normal.

That's about all I have to say. I throw it open to your committee. No doubt you've got a lot of questions. I've been the chair of regulatory boards. I've also been the chair of the pension commission and so forth, so I might be able to give you some advantage, but we're not mad at the Ombudsman.

**The Chair:** Thank you very much for that thoughtful presentation. Any questions or comments?

**Mr David Ramsay (Timiskaming):** Thank you very much, Mr Kruger, for your presentation today. I found it very refreshing, because you have a very open attitude towards the government and the public in regard to the operation of your tribunal. You've had one of the most important tribunals there is in Ontario today.

What I find refreshing about your presentation is that you seem to be able to distinguish quite readily between the independence of your decision-making powers—certainly you respect and defend that, as you should and we all do here—but also have a very clear understanding of the fiscal and process accountability you have to the public.

That's a problem we're grappling with here, because we in this committee feel, from the reports we're receiving from the Ombudsman, that she doesn't distinguish that, she doesn't see that difference, and somehow wants to guard any scrutiny of process and fiscal responsibility, as we would call it. I'm almost wondering whether maybe,

for some reason, there's some little germ hiding in the crevices or something of the Ombudsman's office that attacks these people as they come in. You've both had very important agencies of government, but there's got to be accountability. I don't know how to account for that.

Your view is very refreshing. Maybe you can shed some light on why you don't feel threatened when an MPP calls you and says, "I'm not quite sure that person had his day in court." You don't see that as a threat, because I'm not calling you to say, "You made the wrong decision."

**Mr Kruger:** I think the best way I can answer you, Mr Ramsay, is by saying we all come from somewhere. I come from a different experience to Roberta. Roberta is a lawyer; I'm not a lawyer. My areas of expertise were psychology and economics. I have been an elected official, and I know the importance it had when I went out to the voters to make sure that whatever money was spent, the staff we employed, had to be accountable. I've been a bureaucrat for a very long time, and I have, as a result of that experience, no problem in seeing the difference between keeping one's accountability and at the same time ensuring that there is no interference in your operation.

The Ombudsman is a lawyer, came from that experience. It is my experience, even with the lawyers who are on my board, that they are a little more hyper about these things than I am.

I've found that the best way of resolving issues of this type, Mr Ramsay, is to talk about them; for the committee and the individual involved to talk about them. In my experience in this government and at Metro, I've had many occasions where there have been people who have been at the commissioner level or that where they've have problems. I've said: "The first thing you do, don't write memos. Go and sit down with the people and talk about an accommodation."

It's very important, though, that it be done in such a way that the perception is that a person comes with open hands but with very strong views. "Thou shalt not go over this line." When it comes to accountability, there are more ways of getting at that than just saying, "We're going to put the auditor on to you." That can be, to some people who are not skilled in government, one of the most frightening things. Auditors don't frighten me. Goodness me, I've been around. Maybe it's a product of age too.

I think it's just a matter of perception, and you must understand that everything we do at our board is in the public domain. It's there because if it goes to court, it's going to be in the public domain.

There is obviously a very clear role. I have seen, within ministries, that when an individual bureaucrat may have some power, it can be abused. You need an Ombudsman, there's no question about that, and the Ombudsman has to have freedom to investigate, to ask the questions and to do those things. But when it comes to how much money they spend, that's something—again you must have some type of accountability in that area. It's how you get there that's the important thing.

**Mr Ramsay:** You may have really hit the nail on the head here that where we come from of course has great



influence on our views and perceptions. It may be that you have the confidence in the people of Ontario that they can distinguish between those two principles, that they still see you as an independent decision-maker but at the same time understand your fiscal and professional accountability.

Maybe that's the problem right now with the Ombudsman, and we are going to be speaking with her this afternoon. I agree with you. I've been one on this committee who has really pushed to keep trying to further invitations. We are going to be getting together, and I think it's going to be a very productive session. Hopefully, through that understanding, we who are elected officials could share that, that we know the public can distinguish that. I think the public wants that accountability on one hand, but also wants us to respect and defend that independence of decision-making.

**Mr Kruger:** Mr Ramsay, you see, from the experience I've had, I have no problem at all—if I'm appearing before an elected official body, no matter where it is, be it in public or in camera, if I think that you've gone over the line, I'll tell you. I have no problem with that. I have enough confidence in myself and in the support of the acts.

After all, there are conflict-of-interest guidelines put out by the Premier. No person on the executive council, even in previous governments, has ever called our board to say, "Look, you ought to alter that decision," or "You'd better do something"—nobody. If it happened, not only would I tell the committee, but I wouldn't hesitate to tell the press.

**Mr Ramsay:** Sure.

**Mr Kruger:** But first of all, I'd try to make my accommodation with the government. I want my job.

**Mr Ramsay:** Thank you.

**The Chair:** Thank you very much, Mr Ramsay. Mr McLean, please.

**Mr Allan K. McLean (Simcoe East):** Good morning, Mr Kruger. It's good to see you again.

You indicated in your remarks with regard to the reviews of some of the OMB decisions that—I'm not sure whether it's correct or not that you said there had been none that had been changed after your recommendations had been made and that the OMB has the final decision.

**Mr Kruger:** No. What happens is the members will make a decision. If there's an appeal against that decision to the board, under section 43 we have the right to review or to alter.

We take a look at that decision and we listen to the representations that have been made. If there's an obvious, manifest error of fact or law, if there's some information that could not be given at the hearings that has since come to light, or if there's a question about apprehension of bias on the part of the member, if it has something to do with the conduct of the member and if we're convinced, then we will go forward and we will hold a motion with a different member where all of the parties can come together and say their piece. If it looks as though there's some substance to what this person says, we'll hold a complete new hearing. Now, that happens. It doesn't happen too often, but it does happen.

Another device we use is that if the individual, in coming forward, feels aggrieved and it's being grieved against some other party, then what we will do is send the letter to the other party and say: "Look, this is what we're being told. Tell us what you think." There are many devices.

Also, on the conduct of members, I will get personal and confidential letters coming to me. I get a few of these on a simple thing such as this: There's one little door out of the council chamber—we generally ask for retiring rooms—but what happens is that the member has got to walk right down the council chamber to get out for the break period. He might happen to know the elected official or the lawyer that is there for the council and say hello or something. Then I get a letter, personal and confidential, saying, "The member was prejudiced," or "Things were said to the member," when it was no more than a hello.

What I will do is tell the people, "Look, if you're making a claim against that, I will investigate that as best I can, but if you're going to make this stick, you better know that your private and confidential letter is going to be right out there in public." That stops a lot of the nonsense; some of it does stick.

1030

**Mr McLean:** The follow-up question I have is, once that appeal has been heard and the decision has been made, cabinet then has the opportunity to—

**Mr Kruger:** No, not on the OMB. Since 1983 under the Planning Act, it's only on joint boards. The Leslie Street extension, which is a common thing you see in the paper now, that's a joint board; that is appealable by petition to the cabinet. There are certain things under the Municipal Act that are still appealable to the cabinet. As an example, the Palladium—I expect you would know about that—was not appealable to the cabinet, and the decision of the board was final.

That changed in 1983, because what was happening was that everyone who felt aggrieved was petitioning the cabinet, and the cabinet didn't want that. So the people now rely upon section 43 of the act. That's the best device that a tribunal can have, the ability to rehear the case. Sometimes we go through the process, and although it has nothing to do with the act that we're adjudicating, because of the perception that justice was not done, we might even put it on for a section 43.

**Mr McLean:** Who do you think would be the most capable agency or board to review the expenses of the Ombudsman's office?

**Mr Kruger:** In the supplementary report, the Ombudsman has suggested that an independent group—and I think the suggestion was an independent CA firm—should take a look at that. I look back to my experience in Metropolitan Toronto where we had a very similar case on the licensing commission, which is quite a problem.

We did have independent reviews of our various boards by independent CA firms, but the Metropolitan auditor always said: "These are the standards that we operate by. You go ahead and do it." Their report always got geared through to the auditor to see. I think that is a device that would keep



the appearance of being independent but at the same time would give you some sense of control.

The important thing you're looking for, or that I would be looking for if I were in your position, is to make sure that whatever is being expended is being expended in an expeditious way. I think this can come forward in a report, and then I would see nothing wrong in the Ombudsman appearing. I think you'd have to hear from her. I don't know enough about the functioning of this committee.

Whether it's done in camera or in public, it might give greater comfort to the Ombudsman to have it done in camera, where you take a look at this report and you have the Provincial Auditor, who has said, "All right, that's the firm that we should hire, and these are the standards that this committee might be looking for," and to have it so that you could assure yourselves or that committee, whoever it is, that the money was being spent wisely. As I understand it, that's what committees of the Legislature are about.

There was a time when people wanted to look into individual cases. I think that's an absolute no-no. I think the Ombudsman can rightly tell you, "This is the process we follow. These are the things we found," and if, for some reason, there are still complaints or something about that result, then the Ombudsman should have the right to go back and say: "All right. I'll take another look at it." That's exactly what we do.

**Mr McLean:** And that's exactly what we used to do. I've sat on this committee for quite a while, and we used to review. We wouldn't go into any detail, but on the overall office expenditure we would like to determine why are we spending \$1 million to run a certain office. Give us a breakdown.

**Mr Kruger:** Certainly I have no problem with anybody inquiring into the processes of our board. I have no problem with that, but I would get very upset if any committee said: "Well, this is a process you've got to change. You've got to change all of that." Nor do I have any problem with somebody looking at how we do things. It's completely independent from us, and I'm willing to defend what we do.

I think it's as much confidence and as much attitude as anything, but I think there's a limit. If a committee is going to dig in too deeply behind some of these expenditures and say, "Why did you expend that amount of money on that particular case?" if I was the Ombudsman, you'd hear from me. I'd say: "Keep your cotton-picking hands out of that. That's my job, and if you don't like what I do, fire me."

**Mr McLean:** Thank you.

**The Chair:** Before we move to the next question, I understand Mr Ramsay has a supplementary that he would like to pose to you.

**Mr Ramsay:** Just on Mr McLean's question, when Mr McLean asked you who would be the appropriate person to audit the Office of the Ombudsman, I got from your answer that there might not be public perception out there that the Provincial Auditor is independent and that there needs to be some sort of outside independent CA firm doing this. Don't you think the Provincial Auditor is perceived to be and entrusted to be an independent auditor?

**Mr Kruger:** Of course the Provincial Auditor is, and that's never concerned me, but if any board has a particular problem with that, a way around the problem, as far as compromise is concerned, might be to say that although the Office of the Provincial Auditor itself might not do the actual work, under the coordination of the Provincial Auditor you could have an outside independent firm do that, to take a look at it.

I have used that device before, and it's based on some experience. The end result is the same when it goes to the committee. You get the information you want, but it's coordinated under a different guise. By having to go through the Provincial Auditor, the Provincial Auditor knows what the government and the Legislature want to know.

They know the standards that they've got to look for, they know the inquiry part of it, and if they say to an independent auditor, "Look, these are the areas that you should be particularly concerned about," that's where the coordination comes in, although the Provincial Auditor might not do it. There's always a suspicion, I think, by some people of an auditor that's also a part of a government.

**Mr Ramsay:** The same could be said of the Office of the Ombudsman, because the Office of the Ombudsman is part of the government.

**Mr Kruger:** That's right.

**Mr Ramsay:** But what you're saying is that any provincial agency that doesn't want to play by the rules should be allowed to go outside the rules and get some special treatment because it doesn't like playing by the rules.

**Mr Kruger:** No. I'm saying, Mr Ramsay, as I read the media, there's a particular interest in this problem at this point in time, and you are seeking answers. I'm suggesting to you that might be a compromise between the parties. That's all I'm suggesting.

**Mr Ramsay:** Okay.

1040

**Mr Alvin Curling (Scarborough North):** Mr Kruger, as usual, you handle yourself very well, with all the confidence we know that you do have.

You made a statement that concerns me a little bit. You said you feel that the Ontario Municipal Board has provisions in there for all the appeals possible to address the cases, even to a point where citizens who feel that they're not being served properly can appeal it through section 43 of the Ontario Municipal Board Act. It's also appealed through the courts, and they also feel that the media will do justice to any cause that is there. Even at your OMB hearings, you do have lawyers there too?

**Mr Kruger:** Yes.

**Mr Curling:** And usually lawyers are on the OMB side; in other words, to interpret the law. But are they representing the OMB?

**Mr Kruger:** No, that's not true, Mr Curling. We don't have lawyers who represent the OMB before our hearings.

**Mr Curling:** The lawyer who is there at the OMB, who does that lawyer—

**Mr Kruger:** No. What happens is that the proponent will have his own lawyers. They have their own lawyers.



The appellant will have his own lawyers. It's just like a courtroom. They sit down and we take the evidence from the witnesses and those lawyers are either the appellant's lawyer or the proponent's lawyer.

The lawyer who works for the OMB is a person who just does things internally and never, ever appears before our board, because like a court, it's only based upon the evidence that we hear. This is why it's difficult for an Ombudsman or anyone to look into individual decisions. It's only based on the evidence that we hear, cross-examination and so forth. That member then makes a decision, the member of the board. That member, and there are Supreme Court of Canada cases on that, he or she, who hears the evidence must make the decision. I cannot interfere in those decisions. No other member of the board can interfere in that decision; that's up to that member. I only interfere if there's an appeal against that decision.

**Mr Curling:** Thanks for clarifying that. However, the citizen who is there, sometimes not having enough funds to carry through all—

**Mr Kruger:** Yes, quite often they don't have lawyers.

**Mr Curling:** Yes, and sometimes they would still feel, as you said, that justice was not done to them and the case was not being done properly. But you said there are options and there are directions which they can go to the court. Some of the citizens see the Ombudsman as that individual to whom they will say: "Could you address this for me? I don't feel that justice was done. I don't think the procedures were right," one way or the other. They would then see that not as a cost to them, because they don't have to get a lawyer through the Ombudsman, and they are being deprived of that. They would say, "Well, you have recourse to go to the courts." I would say, "I have no money." Just comment on the fact, why would you deprive—

**Mr Kruger:** First of all, if they appeal under section 43, they don't have to have a lawyer. In fact, a good number, about 50% of the appeals—

**Mr Curling:** But that's within the OMB?

**Mr Kruger:** That comes from citizens. The Ombudsman cannot adjudicate and say, "We made the wrong decision." I'll tell you, if the Ombudsman came in and took a look at our decision, the Supreme Court would be around their necks so quick, they just can't do it. He or she who hears the evidence must make the decision, and it's just that simple.

Now the Ombudsman can look at process. They might say, "That member was terrible, treated you badly." We've had very few complaints that way on anything that has ended up with the Ombudsman. Nothing that has gone to the Ombudsman has ever altered the decision.

**Mr Curling:** That's the point I'm making. I'm not talking about the decision of the Ontario Municipal Board; I'm talking about the process that someone may question. The Ombudsman will not reverse the decision, but the individual will complain about the process.

**Mr Kruger:** The one thing that the Ombudsman suggested to us is that we ought not to have two members sit on panels; it should be one or three. I don't have the luxury.

The Ombudsman suggested we should take a protocol and develop a protocol. We said, "No." We've had cases where two members couldn't agree in the history of this board twice. Generally there's compromise because it's one body of evidence. So what happens is that they will go out and they will investigate, but what the Ombudsman hears is the end of the process. By that time it's gone to councillors, it's gone to MPPs, it's gone to the media, it's gone to everyone, so I just don't know. I particularly refer some people to the Ombudsman at the end of the day, and I say, "Go and speak to the Ombudsman," and I must frankly admit, Mr Curling, I do that as a PR gesture, because they think there's someone else who can help them.

If they come up with something that says, "Look, your member did not conduct himself in a proper way," then that's a section 43, that's open to that. We will be in touch with the individual immediately because there's no time limit on a section 43. We'll say, "What exactly is the complaint?" and the Ombudsman will tell us. Generally, we've heard it all before, but if there's something we haven't heard then we will talk with that member, because anyone who loses at the board, Mr Curling, is aggrieved. When you've got to wait 13 months for hearing and you don't win, you're mad. I know, I take the phone calls; they don't go through a secretary.

**The Chair:** Thank you very much, Mr Curling. Mr Perruzza, please.

**Mr Anthony Perruzza (Downsview):** I'm not going to be very long, but it's been my experience that municipal councils generally tend to make decisions based on the politics of the day.

**Mr Kruger:** Yes.

**Mr Perruzza:** Quite often their decisions are not based in law or in legal argument. It's been my experience that with the Ontario Municipal Board, decisions are generally made based on legal arguments and based in law and, quite often, the arguments, in my opinion, are tilted in favour of the people who can afford the lawyers and who can afford to generate the expert reports, the traffic studies and the sewer studies and all of the social impact studies etc, because the board, quite frankly, doesn't have the resources or the research capabilities to do its own independent assessments.

Quite often you have in front of you developer X who has a trail of lawyers and has generated a trail of reports and studies that have cost hundreds of thousands, if not millions, of dollars, and those are all submitted as very, what I would call, irrefutable evidence in their favour.

On the other side you have resident A and resident B, who are just there saying: "But I can't get out of my driveway now because of the string of traffic. I can't move in my neighbourhood. We're having all kinds of problems. You call an ambulance, they can't get through. You call the police, they're understaffed because we live in an extremely densely populated area. I know these things because I live there, but I can't afford to generate the reports or the studies that will prove my case." Quite frankly, in that case, those people generally tend to lose.



Wouldn't you agree that there should be some body which would, at that point, be able to step in and say: "Let's assess the fairness of this. Let's forget about all the legal arguments that can be made and put aside all the studies that have been generated and let's remove the political influences that may have, at different stages, impacted on this decision. Let's look at plain and simply an issue of fairness here and how resident A and B and developer X have been treated and what's the fair compromise. Where's the meeting ground?"

**Mr Kruger:** All right. I have two responses. What you just described we see pretty well every day of our lives in hearings. It bothers the board because it is not necessarily a level playing field, as you say. It's for that reason we lean over backwards for citizens' groups, and we even give them the right to cross-examine these expert witnesses.

If an individual said the things you've just indicated, "Well, listen, I can't get out of my driveway," that's a very important piece of information, and if that doesn't come out in cross-examination the board will ask that question because we try to be fair.

We are subject to the acts under which we administer, and the Planning Act is very, very clear as to what the rights are. On a simple thing like a severance it really bothers me, or if it's just a variance. Subsection 44(1) has four tests, and the act is very clear that you've got to be able to comply with those four tests.

1050

We see cases time and time again where we know that, from our perspective, we ought to go the other way, or perhaps we ought to go the other way and it doesn't seem fair. But that's the law and that's what it says. That's the first response. We lean over backwards.

The second response is, that's the role of intervenor funding. I've just been through a most difficult hearing, which was the Etobicoke lakefront. There was this little ratepayer group. I felt really sorry for them. We even put into our decision, "Intervenor funding: That's something that ought to be considered."

In our decision on costs, although we didn't award costs against government—and this is all on the public record—we did say the government ought to consider whether or not it should give some money to this group. They sat there every day and they happened to have one person who was doing most of the questioning. We leaned over backwards to the point where I had lawyers popping up every once in a while saying, "That's wrong," and I told them to sit down and let this person ask his questions. He has his MA in planning and he's looking for a job. While he was looking for a job he represented his ratepayer group.

If there had been intervenor funding, that's how you would get the level playing field.

There's a third alternative, and I hate to even suggest it: that the board be given resources, and that's not the role of the board. You'd have to change about four acts. You'd have to change our act and you'd have to change the Planning Act, and there are a couple of other acts you'd have to

change as well to permit it. So there are ways around that problem.

As to whether or not the Ombudsman can come in, the Ombudsman could talk about process and say, "Your process is wrong; it's disadvantaged." I hear this particularly in affordable housing cases where the people will say: "Yes, I know that the municipality says it's a proper thing to do; I know all those things. But it's our community and we don't want it, and surely that's important."

The Ombudsman can take a look at that, but what can the Ombudsman say? "Did we handle the hearing right? If we didn't handle the hearing right, we'll be thrown into court so quickly. We'll have the media on our backs," because that's the first thing that the ratepayers would do in a case like that.

It becomes a question as to what the Ombudsman could do, because the Ombudsman wasn't there to hear the evidence, and we're obliged, under administrative law, to operate in that fashion. We're obliged; we are hemmed in by the Statutory Powers Procedure Act as to how we must conduct ourselves. It's just that simple.

So look to intervenor funding. But then I must ask the question, who's going to pay the intervenor funding? The municipality? The proponent, who sometimes can be a rich developer and sometimes can't be? Should it be the government if there's a large public interest? The Ombudsman can't help in the answer to those questions, because that's a question eventually for the government.

**Mr Perruzza:** So, if I'm understanding you correctly, you're saying, "Yes, this is a problem, and the way to resolve the problem is intervenor funding"?

**Mr Kruger:** Well, the way to resolve the problem is through some changes in the Planning Act, which Mr Sewell is looking at. Intervenor funding is another way. That's how you get your level playing field. That's why they set it up in the Environmental Assessment Board, but then it becomes a problem for our board. There are about 20 or 30 cases we could see, out of the 6,000 appeals we get in a year, that would probably qualify for intervenor funding. It should only be put forward where there is a large public interest involved. I shudder to think that anyone who's on a consent or a variance should get intervenor funding.

**Mr Perruzza:** So you're recognizing that there isn't the playing field and you're recommending that intervenor funding under the Planning Act be changed in order to better achieve a level playing field?

**The Chair:** Mr Perruzza, one moment, please. Can I ask you to please stay within the confines of the review of the Ombudsman.

**Mr Perruzza:** That was my last comment, Mr Chair.

**The Chair:** Thank you very much, Mr Kruger, for appearing before us today. I know that your schedule is very hectic and we do appreciate it.

**Mr Kruger:** Thank you very much, Mr Chairman. It's a real pleasure to appear before your committee.



ONTARIO ASSOCIATION  
OF CHILDREN'S AID SOCIETIES

**The Chair:** Our next group presenting is the Ontario Association of Children's Aid Societies. Good morning and welcome. It's a pleasure to have you here this morning. You have approximately one hour for your presentation. The committee would appreciate if you would leave some time at the end so it can ask you some questions and/or make some comments that it might have for you. Make yourselves comfortable, make yourselves at home. Begin when you're ready and please state your names for the record.

**Ms Diane Cresswell:** I would like to introduce myself and my colleagues. My name is Diane Cresswell and I'm with the Ontario Association of Children's Aid Societies. I'm the manager of communications. I have with me today Kim Way, and Kim is a youth on extended care and maintenance of the Perth County Children's Aid Society. She is a student at the University of Waterloo and she has worked for the last three months, for the summer, at the Ontario Association of Children's Aid Societies. Also with me is Ray Muldoon, and Ray is the executive director of the Norfolk County Family and Children's Services.

I have provided you all with a submission and we will highlight parts of the submission and will be quite pleased to answer any questions following our submission.

On behalf of the OACAS, we appreciate the opportunity to appear before this committee today and to comment specifically on the possible inclusion of children's aid societies in an expanded jurisdiction of the Ombudsman's office.

The OACAS appeared before this committee in 1988 and documented extensive checks and reviews of CAS work through legislation, court processes, review bodies and other complaint mechanisms. Our 1988 position was that there was no need for an expansion of the jurisdiction of the Ombudsman to children's aid societies. Our position in 1992 is exactly the same.

The standing committee on the Ombudsman poses the questions: Should the Ombudsman's jurisdiction be expanded, and should the jurisdiction be expanded to include children's aid societies?

The OACAS feels that there is no need to expand jurisdiction to CASs. The 49 member societies of the OACAS are concerned about quality of service and assert that the review mechanisms and complaint procedures provided for in the Child and Family Services Act are sufficient.

The OACAS believes that the opportunities for consumer input provided by children's aid societies allows persons to come forward when they have concerns about service. The OACAS and its member agencies are also invested in the development of standards of service and an accreditation program for all children's aid societies.

There are 54 children's aid societies in the province of Ontario, three of which provide services to native children and families exclusively. The remaining 51 children's aid societies provide services to approximately 79,000 families with children in the community and care for approximately 20,000 children each calendar year.

The field of child welfare has always been subject to review of its actions because of the extensive powers granted to children's aid societies to intervene in the

privacy of family life for the purposes of protecting children. Being subject to such scrutiny goes with the territory for children's aid societies.

Scrutiny comes from outside bodies, such as the courts, the Ministry of Community and Social Services and special reviews like crown ward reviews etc. Scrutiny comes from within CASs through such practices as case work supervision, comprehensive case recording, monitoring by the board of directors and mechanisms such as case conferences and placement review committees.

1100

In order to ascertain that children's aid societies are carrying out their functions as assigned by legislation and within the parameters established in Ontario regulations and ministry standards, guidelines and policies, children's aid societies are already subject to many reviews. A listing is provided in our submission, and a description of each of these reviews is found in the appendix in the green pages. I won't bore you with going through all those, but there are many and the descriptions are there.

A study of the review and accountability mechanisms contained within the Child and Family Services Act was carried out by a committee representing ministry, CAS and OACAS persons. A report was published in 1991.

The study described review mechanisms and accountability systems which in some cases duplicate one another and are reviews after the fact of children's aid society actions and decisions. The committee of ministry and CAS personnel recommended a forward-looking approach to accountability and encouraged the ministry to support the development of an accreditation process for children's aid societies. The OACAS and its member societies had already begun development of an accreditation process, and that started in 1989.

Children's aid societies in the province are incorporated under the Ontario Corporations Act as not-for-profit private corporations. Each CAS is governed by a board of directors of elected volunteers from the local community. Regulation requires that there be at least four municipal representatives on the board of directors. The Ministry of Community and Social Services provides model bylaws for use by the agency, and each children's aid society determines the board structure, the board membership, the board committees, bylaws and the general operation of the society.

While the board is responsible for the overall governance of the society, the executive director is responsible for the day-to-day operations. He or she is employed by the board of directors to implement its policy and planning decisions within the parameters established by the Child and Family Services Act and other legislation.

The Ministry of Community and Social Services requires reports on services and finances from each society on at least a quarterly basis. The CFSA also assigns a program supervisor to the local society. The program supervisor has the right to advise, supervise and inspect the work of the children's aid society. The program supervisor has power of entry and other rights to exercise in order to ensure compliance of the children's aid society with the provisions of the Child and Family Services Act.



Children's aid societies only intervene in family life when there is evidence that a child may be in need of protection. That intervention is also only with the consent of the parent or on the direction of a family court judge. If a child is admitted into the care of a society without parental consent or if the child is voluntarily in CAS care on the parents' consent and the CAS determines that the child cannot be returned home, the society must make an application to the court within five days of the apprehension of the child.

Part III of the act sets out detailed provisions as to when and how a society brings matters before the court and how to review outstanding orders. The act also provides access to the courts to parents, foster parents, Indian and native representatives and children, both for review of existing issues and for the court to consider new ones. The CFSA makes clear provisions for the legal representation for all parties, including an official guardian representative for the child.

The Child and Family Services Act provides for two complaints procedures for children's aid societies.

Section 64 outlines that a society must establish "a written review procedure, which shall be approved by a director, for hearing and dealing with complaints by any person regarding services sought or received from the society, and shall make the review procedure available to any person on request." The procedure must include an opportunity for the person making the complaint to be heard by the society's board of directors. If the person is not satisfied with the response of the society's board of directors, the matter can be reviewed by a ministry director.

Every society in Ontario has a written complaints procedure, in accordance with section 64, which is available to clients in written form. Societies providing services to francophone communities provide procedures in both French and English.

There is a blue page in your submission which is a copy of the complaints procedure which is handed to clients who've come into contact with the Catholic Children's Aid Society of Metropolitan Toronto. The Catholic CAS not only provides this complaints procedure in English but also provides it in French, Portuguese, Italian and Spanish. The CAS here in Toronto has this information also in Japanese, Chinese, Greek, Vietnamese, Arabic and Somali, and it will soon have it in Spanish and Hindu.

The vast number of complaints are dealt with by the front-line worker or supervisory level. I'll give you some statistics in terms of those complaints that went beyond the supervisory level and then were in fact dealt with at the formal level in two children's aid societies.

The Toronto CAS here in the city serves more than 9,800 families annually and cares for 2,400 children each year. In 1991, 22 complaints reached the service directors. That was into the formal process, above and beyond what would be dealt with at the supervisory and front-line level. Only 22 complaints reached the service director's level for resolution. In 1992 to date, only 13 have been dealt with at the service director's level.

In that same agency in 1991 and 1992, only six reviews have needed to be dealt with by the executive director, and

two went to the board of directors. Over the last five years, only two reviews have needed to be reviewed at the ministry level for the Toronto CAS.

Ottawa serves 4,000 families annually and cares for 1,300 children each year. Of the 20 formal complaints received in 1991, 18 were resolved internally at the children's aid society, and in two it was necessary to receive ministry intervention.

The Ministry of Community and Social Services has informed me, at my request, that only 20 cases have required a director's review over the last five years, that is, since 1987. I will remind you that children's aid societies in the province provide service to more than 80,000 families each year and care for 20,000 children each year, so we're talking about 20 cases that went to that review over five years.

When a director's review is conducted, the recommendations from the review are provided to the ministry and to the society. The society is requested to respond, indicating what it will do with the recommendation and in what time frame. The Ministry of Community and Social Services is then there to monitor the situation.

Section 105 of the Child and Family Services Act outlines that a service provider who provides residential services to children or places children in residential placements shall establish a written procedure for hearing and dealing with complaints regarding alleged violations of the rights of children in care. The service provider must conduct a review or ensure that a review is conducted on the complaint of a child in care, the child's parent or another person representing the child, and shall seek to resolve the complaint.

Should the issue not be resolved, then section 106 of the act provides for a further review by someone appointed by a ministry director and not employed with the society. The appointee may hold a hearing and must provide a written report to the complainant, the society and the minister within 30 days.

These complaint procedures are designed to take the minimum amount of time to complete so that, should the service or the result desired require an alteration in the plans for the child, the disruption will be as little as possible. It is also important to recognize that in any of these complaints, time is of the essence. When the concerns are expressed in terms of the internal complaints procedure, there is somebody available to deal with the issue, and that is very important.

The standing committee on the Ombudsman poses the question: If Ombudsman's services are needed with children's aid societies, are there better ways to provide them than through expanding the jurisdiction of the Office of the Ombudsman? We believe the work being done on an accreditation program and the involvement of consumers of service in our work greatly enhances the complaints procedures and the review mechanisms provided for in the legislation.

#### 1110

The Ontario Association of Children's Aid Societies has 49 member societies, and we receive numerous questions about the role of the CAS, access to services and the rights



of clients. These calls are initiated by clients themselves and by advocates such as the Ombudsman's office.

All concerns are handled by a manager at the Ontario Association of Children's Aid Societies who has extensive social work and children's aid society experience. Callers are provided an objective listener who encourages the client to use the local agency complaints procedure, offers objective advice and intervenes on behalf of the client where necessary. OACAS staff contact the local agency to inform them of the complaint, and senior staff of those societies not only are responsive and helpful in dealing with these problems but take a personal role in dealing with the issues.

Although the Child and Family Services Act demands services be offered in the least intrusive manner, the need to intervene to protect children is intrusive. Parents do not always agree with the intervention which the agency has determined necessary; however, the family court system is the final check and balance to ensure that individual clients' rights are respected and that ultimately children are protected. At times of high emotion, however, the clients still sometimes find it difficult to understand or accept the intervention.

In 1989 the Ontario Association of Children's Aid Societies, at the request of its member societies, began work on the development of an accreditation system. Standards of service have been developed in 10 areas of service. The standards go beyond minimum standards required by government. The standards express good practice and expert assessment of what agency structures and processes will contribute to quality service outcomes for consumers. The standards specifically address clients' rights and complaints procedures for children, parents, foster parents and other persons.

The accreditation process will include an agency self-study process in which the children's aid society will review its compliance with each standard and report its findings to the provincial accreditation committee. Every fourth year a site review team composed of senior child welfare personnel will visit the CAS to interview staff, board, foster parents, volunteers and others to confirm the degree of compliance with standards reported by the children's aid society in its self-study. The self-study and site review processes will involve a variety of means to obtain client input about their satisfaction with the service. The accreditation process requires that agencies establish quality assurance systems to measure the quality of service provided on a regular basis.

The accreditation program focuses on structures and processes which must be in place to provide for client satisfaction with service and make good client outcomes possible.

Children's aid societies in Ontario are extremely concerned about the quality of service they provide. One of the goals of the OACAS information systems project, funded by the Ministry of Community and Social Services, is to develop ways to measure client benefits. OACAS will soon survey children's aid societies and other transfer-payment children's services to determine what quality assurance initiatives exist.

The OACAS is also seeking funding to develop a comprehensive competency-based in-service training system for child welfare workers. Training of staff is an important aspect of quality service. In order to assure a quality outcome and output, we believe we need quality input. The relationship between the worker and the consumer is the essence of CAS work. Clients deserve the quality input that adequately trained staff can provide.

Children's aid societies in the province provide a voice for consumer groups by supporting the establishment of youth-in-care groups, parent advocacy groups, foster parent associations and adoptive parent support groups. These groups provide opportunities for consumers to meet together and to discuss problems and make recommendations for change to service.

The OACAS Youth Project, established in 1985, provides youth in care a voice at the provincial, regional and local levels. Youth are invited to conferences, workshops and groups to discuss services and concerns with service providers and others who make decisions about their lives. This is an excellent example of the empowerment of clients, providing opportunities for them to speak out and make recommendations for change and then adjusting services to meet their needs.

In your package you have a copy of the Journal, which is the orange journal of the Ontario Association of Children's Aid Societies. In that we highlight the deliberations of youth at our recent conference in May 1992.

In the spring of 1985 the OACAS invited youth to attend the OACAS conference to review services and make recommendations for change. Over the past seven years, 80 to 100 youth have attended every year at the conference. In 1992 the youth presented their concerns and their recommendations in front of the 600 delegates from throughout Ontario who were service providers, board members, foster parents, executive directors, ministry personnel and other youth. Much has been accomplished through this particular project.

In 1991 the Ministry of Community and Social Services provided funding to organize regional activities and develop a youth-in-care network. More than 50 young people in each of eight regions participated in regional activities where services were reviewed, concerns expressed and recommendations made. Following this involvement, youth attended the 1992 conference with a sense of accomplishment, seeing results from their voices and actions.

In the summer of 1992, OACAS was able to hire a youth under the extended care and maintenance program to act as liaison with youth in care in Ontario, and Kim is with us today. She will speak to us in a few minutes about the establishment of a youth telephone line at OACAS; the development of a youth newsletter; changes to accessibility of OSAP funds for youth in care; the need for a policy review of extended care and maintenance; her meetings and conversations with senior ministry officials, judges, senior child welfare officials, front-line staff and youth and then the establishment of youth representative positions in each CAS in Ontario.



The Ontario Association of Children's Aid Societies believes that the services of the Ombudsman's office are indeed necessary for those government agencies that do not have review mechanisms and complaints procedures in place. However, we do not support an expansion of the Ombudsman's jurisdiction to CAS. We feel that the checks and reviews that are mandated by the Child and Family Services Act are more than sufficient to provide for accountability. The complaints procedures outlined in the Child and Family Services Act are adequate to provide children and families protection of their rights.

The role of local boards of directors in the governance of the work of the society is an important monitoring mechanism. The Ministry of Community and Social Services monitors, through the program supervisors, the work of the society. The courts provide the final determination of whether a child needs to be removed from the home.

The development of standards of service and an accreditation program for children's aid societies enhances the reviews and complaints procedures mandated by the legislation. Last but not least, the encouragement of consumer input to services provides children in care opportunities to be heard at all levels.

I'm going to ask Kim to give you some information on her work this summer at the OACAS and how she's connected with young people who are in care of children's aid societies throughout the province. Then I will ask Mr Muldoon to speak to dealing with a complaint in the local society, and then we will be prepared to respond to any questions.

**Ms Kim Way:** I'm Kim Way, and I'm with the Perth County CAS. I've been involved with children's aid societies for a very long part of my life, and I've been in care for eight years. Of the seven years that the OACAS has been involving youth at the conferences, I've been at four of the conferences and have heard many of the youth concerns and issues and am very familiar with them even just from my own life.

I've been hired at the OACAS to represent youth at the provincial level when talking to ministries, committees etc about issues and concerns of youth across the province. I've developed youth communications through the newsletter and through a telephone line, as well as meeting with different youth in Ontario about their concerns and issues and the movement on recommendations that are established at the conferences. I support and encourage the youth in the planning processes of their fall regional activities in the eight different regions in Ontario.

We decided to establish a youth telephone line at the OACAS on some Wednesday afternoons, and through our newsletter we made all the youth in Ontario aware that there would be this phone line there. The youth are encouraged to call me if they have any problems with their social workers or with their agencies that they feel they cannot deal with or just to call with information about other contact people and agencies in order to link them up with each other.

1120

We also have developed a youth newsletter called NOTICE, Needs of Teens in Care Everywhere, and I will

leave five copies of it for you to browse through. It updates youths on what we are doing provincially, as well as giving them suggestions on how to make youth groups better or to start a newsletter, information such as that. In the next issue we plan on talking about the discussion paper that talked about independence and advising them of the child advocacy office and policy reviews and the job position that we're hoping to have in the fall.

Because of the 1991 conference, the big concern was with OSAP and the crown wards not receiving maximum amounts when they were going to post-secondary education. Youth, staff, front-line workers, ministry personnel, OACAS, got together and discussed the concerns and issues of OSAP. There was a new procedure for youths in care to apply to OSAP and there were 50 applications that were directed to the Thunder Bay office so that they could all be assessed at one office and a different procedure within the agency in order to get them there. We'll be deciding in the fall if this procedure helped at all.

We need a policy review of extended care maintenance. Extended care maintenance has been a very big issue with youths for a long time. We did a survey at the beginning of the summer and we've been working on a discussion paper. The survey analyses the different agencies, the funding and the support that each youth gets, and it varies across the province. We need some consistency and the youths have been saying that. We've been working on it. We also asked youths to comment on things that we've done and make suggestions etc.

I've had different conversations in meetings with assistant deputy minister Sandra Lang and members of the co-ordination branch, as well as the director of the child services branch and people such as that about the extended care maintenance issue and the policy review, as well as developing the youth networks and what we're doing to help the youth.

We hope to establish youth representatives in each agency in the fall, and we realize it will probably take time and there will be scattered contact people in each agency, but the youth representative would be responsible at every level—the local, regional and provincial levels—and giving comments and concerns and voicing youths' opinions on the recommendations and concerns that they have. We hope that youths will be on committees of the board and present to the board at their local agencies so that the issues are heard there as well.

We hope that youths will help in the planning processes of the regional activities, as well as help run youth groups and develop communications within their own agencies to get the concerns that may not be being voiced because individual youths are shy of telling but they may tell other youths.

Youths have been able to comment on OSAP, as well as the accreditation part. Child-in-care standards: Youths have had a chance to comment on that as well. So the youths in Ontario of the children's aid societies have got a voice and they are being heard at the local, regional and provincial levels.

**Mr Ray Muldoon:** Good morning. My name is Ray Muldoon. I'm the director of the Norfolk county children's



aid society. For those who don't know where Norfolk is, it's a small, little, beautiful part of Ontario on Lake Erie. Simcoe is our main centre.

We provide services to approximately 55,000 people in our jurisdiction and during the past year we serviced approximately 700 families. Because of the nature of the service that we provide, we often invoke issues, and there are concerns expressed by our client population. There's no question.

I'm not here today to evoke any direct concerns related to those complaint mechanisms because I feel strongly that they work for the clients and the kids in our care. I did a quick review when I was called by Diane to join her in this presentation, and we were able to track approximately 20 client-initiated issues or concerns related to our service during the past two years.

However, when those clients were able to come to the agency and meet with the worker and the supervisor involved, only three of those situations required a formal meeting with myself, which is the next step in the procedure, and one of those meetings required a meeting with the board of directors. So really, I guess what I'd indicate is that the client complaint procedures our agency and every agency in the province have in place work rather effectively.

I wanted to bring to your attention a recent matter that came to my attention which I think does clearly indicate how complaints are handled at children's aid society levels, and how kids are involved in those complaints.

The issue I was made aware of involved an access custody matter. As you probably would be well aware, many of these issues are very emotional. Tempers and emotions run very high. In this particular case, both parties were making accusations around the custody and access between the parties. The child was on weekend visitation and there were some allegations that the child was being injured during his visitations.

After a brief investigation and assessment of the issue, both parties complained, and complained vigorously, that the issues weren't being directly dealt with. It then became necessary for our agency to become more involved, and the supervisor was involved with the family doctor. Very quickly we sat down, we reassessed the issue, and we put in place, we think, a pretty effective child protection plan and an access plan for this particular kid.

What's important about that particular example is that the issue was dealt with within one week, and the child's access was not disrupted. We think the child was protected effectively, and we also feel that the issues of both parties were heard.

My concern, related to any more formalized complaint procedure with issues such as those, is that basically we'd be in a position where access issues, complaint issues, might need to be dealt with over a longer period of time.

In conclusion, I'd just like to state that from my dealings with client issues through our boards, through our courts and through our own complaint procedures, I would suggest that those issues are appropriately dealt with and that client issues are heard.

The final point that needs to be made is that in any situation where agencies are looking at custody of

children, long-term custody where we're looking at very intrusive interventions in the family, the family court system is the final check and balance. We can't make those decisions without that family court order. So we feel that our current state of dealing with client issues is very effective and would support the OACAS position.

**The Chair:** Questions and/or comments?

**Mr Stephen Owens (Scarborough Centre):** Ms Cresswell, we seem to be running into each other this summer with various committees I'm involved in. I'd like to thank you for your presentation. As usual, it's well-thought-out and well articulated by yourself and your colleagues.

I'd like to ask questions about the complaints procedure and then I'd like to ask Ms Way some questions with respect to the youth representative.

In terms of the other pieces of legislation we're working on, the Advocacy Act, the Consent to Treatment Act and the Substitute Decisions Act, do you see those as having a positive effect in terms of bolstering your case with respect to not being covered by the Ombudsman; that the Advocacy Act, for instance, will put in additional checks and balances that weren't available prior to your taking this position in 1988? You mentioned that you presented at this committee in the past. Do you see the new legislation coming on stream as actually being an additional check and balance for you?

**Ms Cresswell:** Yes, it certainly is.

**Mr Owens:** Whether you give it full support, I guess, is the other question.

**Ms Cresswell:** Perhaps you recognize what our position is, certainly on the Consent to Treatment Act in terms of the position on age. Yes, I see that as just another check and balance. We feel there are many; we don't need to be under the jurisdiction of the Ombudsman and have one more check and balance.

**Mr Owens:** In terms of your complaints procedure, how accessible is it, whether it's the client in care or the parent who may be objecting to a decision that's been taken? What type of steps do you take in order to explain the complaints procedure, and are these complaints procedures posted and visible to people?

1130

**Ms Cresswell:** Maybe I could ask Ray to speak to that in terms of the Norfolk agency, and then I'll make some comments.

**Mr Muldoon:** For all children in care, we're legislated to explain to them their rights and their right to a complaint procedure, so they're all handed a booklet, and this booklet is read or explained to younger children. Basically it would outline their rights in care and their right to a complaint procedure. The same thing would apply with our foster parents, and there's an extensive foster parent manual that all foster parents have access to.

Probably, most of our complaints would be initiated by families who are provided service by the agency. Any family or any individual who requests a meeting with a worker or a supervisor to discuss issues is provided with a copy of our complaint procedure. It's in writing—I have a copy of



it with me, as a matter of fact—and it's pretty clear. It's not very technical. We think it's something all our families can and should understand.

**Ms Cresswell:** Just to follow up on that, in most societies, that complaints procedure for clients goes with a worker, and that worker would pass that written material out to a client. Also, they are available in waiting rooms of children's aid societies so that people can pick them up. As Mr Muldoon outlined in terms of the complaints procedure for children in care, there is a booklet that is provided to all children as they come into care, and it is explained to them at that time.

It's very interesting that at our most recent conference, with our youth with us, what the young people were saying was: "You give us these books on rights and responsibilities and complaints procedures when we come into care and sometimes we forget that. When we're coming into care, there's so much going on right then." So our young people are saying to us: "Not only should you give it to us and explain it to us when we come into care, but we want you to come back to it and we want to review it again 30 days later" or "three months later."

There are some young people in the province, a group in the north, who are looking at the complaints procedure, looking at the rights and responsibilities booklets. They say that some of them are much too juvenile, so what they want to do is to write them at a level they can understand, that will be more extensive for the older youths, as opposed to for the younger child. So there's a lot of involvement of our young people in terms of reviewing those kinds of mechanisms too.

**Mr Owens:** I appreciate your answer, and I have certainly not come to any position personally in terms of whether I feel the children's aid societies should be covered. The Ontario Separate School Trustees' Association was in yesterday and making a similar point with respect to its feelings that there are enough checks and balances within the system.

The only comment I would like to make is that in terms of the processes that are in place, it's still an intragovernmental, intrasociety process, and I'm wondering if there may be a point of departure where it might be helpful to take, not all situations, not all cases, but a select segment and move them into another avenue of appeal. This is only a thought I've developed over the last couple of days in listening to some of the presentations.

**Ms Cresswell:** I think the other thing that's important to recognize is that our boards of directors are volunteers who are elected from the community, who have a full and wide range of experience and involvement in the community. If it gets to that level where there does need to be some intervention there, you've got a wide range of experience and people to impact on that review.

**Mr Owens:** In terms of the youth representatives, what types of authority does the children's aid society give its youth representatives? And in terms of tracking issues, what systems are in place to ensure that your concerns are being addressed and that resolutions are in fact being made on your issues? One of the concerns I have, not under-

standing your system, is that it's wonderful we have representatives, but it's how the input is handled: Is it effectively dealt with, and are results gained at the end of the process?

**Ms Way:** The youth representatives work with a staff member from the agency. It's usually a worker who's working on independence training or someone devoting his or her time to the youth groups. The youths are working right with the workers, so they can converse back and forth, as well as working with other youth.

When issues come in to the youths at a local level, the youths and the staff can work them out, or it can go above and beyond, where the youth representative may call the OACAS and say: "Kim, this is going on. What can we do about it? Can somebody say something to the workers? This system's just not working. Can somebody explain this to them?" That's where I'd ask Diane, and Diane could make contact with the agency or the supervisor who would be in charge.

The big issues seem to be coming up at the conference, and the recommendations are given to the OACAS and we work on them, such as we're doing with the extended care and maintenance and on OSAP and things like that. But there are smaller issues such as, "Well, gee, my worker's not phoning back." We direct them back to the local level, saying, "We want you to call them back at this certain time," or establish some type of grounds with them, "I'm only in the office this many times a week and in these hours, and I will try to call you back," or they keep coming back at the next conference and we will do them again.

**Ms Cresswell:** I just want to comment in terms of the representatives we are attempting to set up in each agency. This is a relatively new project in terms of setting that up, so we're working that through.

But as to the young people who have come to the conference over the last seven years, when they are selected or have earned the privilege or competed or whatever—in many agencies they do it in different ways as to how we determine which of our many youths will go. Those young people are sent to the conference to be their own persons and come very clearly with their own views, and the agencies are quite willing to have them come forward and put their concerns and expressions on the table. Then what we try to do is to pull that all together and feed it back to the young people from there. But I really do feel that the agencies have been sending those young people to represent themselves and are quite confident that they will do that. A number of significant changes have been made in agencies as a result of that voice.

**Mr Ramsay:** Ms Cresswell, thank you for your presentation. I want to ask a question to get a sense of how agencies operate around the province. Is it common practice that all staff of the agency would be active participants at the annual meeting where the board of directors is elected?

**Ms Cresswell:** Staff would participate in the annual meeting. In most agencies, the bylaws provide that staff cannot be a voting member.

**Mr Ramsay:** So that's not common practice.



**Ms Cresswell:** There may be one or two agencies where staff can be voting members, but in most situations no. They would participate and contribute, certainly.

1140

**Mr Ramsay:** Under your complaints procedures, you talk about section 64 of the Child and Family Services Act and you refer to a written review procedure which shall be approved by a director. What kind of director is that?

**Ms Cresswell:** That would be a ministry manager, area director.

**Mr Ramsay:** So this would be the direct supervisor of the executive director of that agency, probably?

**Ms Cresswell:** Yes.

**Mr Ramsay:** Is that not a bit incestuous? Do we really have independence there, when we have the director from the ministry who is, in the day-to-day operation, supervising that agency now called upon to judge not only how that executive director is pursuing his or her duties but in a sense almost judging his or her own work, in that this person has supervised this agency's day-to-day operation? I mean, you're almost judging the relationship and the supervisory role, not just what the agency's doing, because the agency works under that person all the time. Is this enough of a watchdog? That's what I'm getting at.

**Mr Muldoon:** May I just make a comment? In terms of the role of the program supervisor, which is who we are talking about here, he or she doesn't become involved in the day-to-day activities of the agencies in any way, shape or form. They're more involved in funding issues related to the agency and ministry policy directions. In terms of day-to-day service, programming etc, the director and board do that work.

The complaints that are initiated—as an example, the one I talked about—are usually, I would say almost always, directly related to service provision. The director we're talking about has nothing to do with that direct service, so there really is very much of an arm's-length relationship in that sense.

**Mr Ramsay:** But if there are problems and that supervisor is not intervening in any way—you're saying he or she is not supposed to intervene, but if there are major disputes, say, between the foster parents' association and the CAS as to whether the child is having proper supervision, the supervisor from Comsoc must be ultimately responsible for the operation of child protection in that area. You're the agency carrying that out day to day, but it just seems to me you are almost asking somebody to make a judgement upon himself in kind of an indirect way. I'm just wondering how much objectivity there is there, that's all.

**Ms Cresswell:** I think it is important to recognize, as Ray points out, that the executive director is hired by the board of directors, and the board of directors and the executive director have the day-to-day responsibility for the working of the agency. The ministry is supervising in terms of ministry direction, funding and programming in that way and does not become involved. Yes, I do believe there is enough of a separation there. That program supervisor does not get involved in the individual cases of the

day. It would be much more funding for programming—we need X number of dollars for a particular program; how can we access this, how can we change our overall programming?—but certainly not the day-to-day work.

**Mr Ramsay:** I may be using a poor example, because in my hypothetical example, the perception is that the executive director has stacked the meeting, and all the staff have been active participants in voting for the board of directors; so now the perception is that the board of directors is stacked, so it's a very unhealthy situation. What you've just told me is that most boards, in bylaws, don't allow the staff to direct the board of directors, which seems to me to make sense, because I think you'd have a conflict of interest voting for your boss.

**Ms Cresswell:** I know that in all children's aid societies, their bylaws would provide that there could not be a staff person on the board of directors. I'm quite sure that there may be just one or two where staff persons can be a member of the society and therefore participate in the annual meeting, but that's very unusual.

**Mr McLean:** I'll be very brief. You've made a very impressive presentation here today, and I agree with you that I don't think there is a need to have your jurisdiction under the Ombudsman.

I had the opportunity to spend a year on a board. I have a sister who is a foster parent, and I'm well aware of the workings of the children's aid society and the volunteers who give their time across this province. I think they're well run. I think the procedures we have for complaints is excellent. We don't get a lot of complaints with regard to the operations of the children's aid societies. I think they do a super job.

I really haven't got a question, but I wanted to make a few comments to let you know I certainly support what you're doing. For those kids who need you, you are doing a good job.

**Ms Margaret H. Harrington (Niagara Falls):** Thank you for coming, and a special welcome to Kim. Where are you from, Kim? Are you from Toronto?

**Ms Way:** No. I'm from Stratford, but I live in Kitchener and I commute back and forth to Toronto to work.

**Ms Harrington:** I see. I think your group is probably the same group I've heard about from Marilyn Churley, who is from the Riverdale area of Toronto. She wanted several of us members of the Legislature to meet with the youth group to hear what you're doing.

I wanted to ask you if you could explain to me the term "extended care maintenance" and what that means.

**Ms Way:** When a child comes into care and becomes a crown ward, that is terminated when he or she turns 18. They have a choice of leaving care when they're 16 or 17 and up until they're about 18. When they're 18, the agency can apply for another year of being able to fund them and care for them. Then when they turn 19 through to 21, they have to apply to the area office, which is the ministry. In some cases, the youths are funded while they go on to post-secondary education or finish high school. They may need counselling, so they stay in the care of children's aid societies, or they just may need support, and the file is left



open. A case worker will see them, and it's more or less just an open case with some support and some funding in some cases.

What we're finding is that some agencies have to let their youth go at 18 because they do not have the time with staff. They don't have the money to support these youths. They refer them to welfare or the kids are just out on their own all of a sudden. That's at the age of 18 that this all starts taking place.

**Ms Harrington:** Thank you very much.

**The Chair:** I want to thank you for taking the time out to appear before us this morning. I know that all three of you probably have an extremely busy schedule, and we really do appreciate it. This committee will stand adjourned until 2 pm this afternoon.

The committee recessed at 1148.

## AFTERNOON SITTING

The committee resumed at 1407.

**The Chair:** I call the committee to order. Good afternoon. I'm Mark Morrow, Chairman of the standing committee on the Ombudsman. It is with regret that at 11:58 this morning I received a fax from the Ombudsman of Ontario telling the committee and myself that she would not be attending our session this afternoon. I'd like to read that fax out, with the indulgence of the committee.

"Mr Mark Morrow,

"Chair, standing committee on the Ombudsman.

"Dear Mr Morrow:

"Eight days ago I received a thoughtful and courteous letter from you asking if I might meet with the standing committee. I was delighted that no mention was made of the review; no mention of crossing the boundaries between our mandates. I was very hopeful that we would be able to start a dialogue. I have always felt that this dialogue was very important and had asked for it for months. When in a subsequent meeting, my staff and members of your sub-committee agreed to a fair compromise that would protect my office's independence, I was even more optimistic.

"Naturally, I was taken aback with your letter the following day which seemed to be a total retraction of the invitation. I was further concerned when your witness list appeared, in which I was listed among a number of witnesses who appear as part of the review.

"When I personally called you on Monday and asked you to make simple changes to make it clear that I was not part of the review, as we had agreed, you said you were unable to accommodate those concerns. I told you then that I would not be able to appear unless we could come to an arrangement. I never did hear back from you. I am sorry that you were not able to find a suitable arrangement.

"It is a shame that the efforts which may have made it possible for the committee and I to meet to start a badly needed dialogue has gone to naught over ambiguities. I can only conclude that the committee was unable to sort out the difference between technicalities and the spirit of our agreement. Our agreement would have gone a long way to protecting the public's fragile trust and understanding of the independence of the Ombudsman and, as you know, that is of paramount importance to me.

"I wish to thank those members of the committee who during the summer's course of events supported the concept of an independent Ombudsman and who sought a way to work cooperatively and productively together.

"I am hopeful that we will eventually find a satisfactory way for us to work together without compromising our principles. I look forward to meeting with members of the Legislature and to engaging in the dialogue set out in your August 19th letter after the Legislature reconvenes in late September and decides how it wishes to deal with my special report."

It's signed by Roberta Jamieson.

With the committee's indulgence, I would like to go back at this time chronologically to talk about and to read into the record the letters that we have received back and

forth since July 27, 1992. Is that okay with the committee? Okay.

As the committee may be aware—and I do apologize; this may take some time—May 28, we tabled our 19th report.

"June 25, 1992: Ombudsman responds to the report and states that she is unable to comply with the recommendations.

"Ombudsman requests the opportunity to appear before the committee to set out her position in full detail and to engage in a dialogue.

"In her letter she commented that 'since, as a result of the Legislative schedule, the committee may not be meeting for several months, I am placing it on the record now....'

"July 21, 1992: Committee writes to the Ombudsman stating that to begin our review we require some background material on the work and the operation of the Office of the Ombudsman.

"July 22, 1992: Ombudsman writes to state that our letter of July 21, 1992, does not mention her request of June 25, 1992, and states that a meeting must be held before she will consider giving consideration to the committee's letter of July 21, 1992.

"July 23, 1992: Legislature passes a motion which authorizes the committee to hold hearing in August for the purpose of conducting its review of the Office of the Ombudsman.

"July 27, 1992: Committee writes to the Ombudsman acknowledging her letters of June 25 and July 22."

I'll read that letter now:

"Roberta L. Jamieson,

"Ombudsman,

"Office of the Ombudsman

"Dear Ms Jamieson:

"Re: Review of the Office of the Ombudsman

"In your letter of July 22, 1992, you comment that you have not yet received a reply to your request of June 25, 1992, to appear before the standing committee, and that this meeting must be held before you will consider providing the information which we requested in our letter to you of July 21, 1992.

"With respect to your request to appear before the committee, we take this opportunity to inform you that on July 23, 1992, the Legislature passed a motion which authorizes the committee to hold hearings this August for the purpose of conducting its review of the Office of the Ombudsman. We believe that this would be an appropriate opportunity for you to raise your concerns with the committee's recommendations, along with other comments and suggestions concerning the need for changes to the Ombudsman Act and to your office's operations. We will shortly be forwarding you a list of issues on which the committee hopes to receive comments. We will then be meeting to arrange the schedule for witnesses to appear.

"The committee is extremely concerned with your refusal to comply with its recommendations and believes the discussion you suggest may be useful. However, in order



for such a meeting to be productive we would ask that you provide a more detailed explanation as to your reasons for choosing not to implement the committee's recommendations. In this respect, we note that you have made a general assertion that compliance with the recommendations would represent an abdication of your responsibility to exercise your discretion independently, but have not indicated why this is the case for each of the various recommendations the committee has made. Some explanation of your concerns with respect to each of the recommendations would be helpful in advance of the meeting.

"While we look forward to meeting with you, we do not agree, as you suggest, that this meeting must be held before the information which we requested in our letter to you of July 21, 1992, is provided. We would note that the information requested relates to the matters which are the subject of the committee's hearings, and is therefore information which the committee is authorized to send for, since the committee is authorized to send for such persons, papers and things as it considers necessary for its proceedings or deliberations. Therefore, unless you believe that you do not have the power or responsibility to provide the information, we see no reason why the provision of this information should be delayed.

"We therefore repeat our request for this information. We would also ask that if you do take the position not to provide the information, please indicate to us why you believe that you do not have the power or responsibility to do so.

"Should you have any questions concerning the above please do not hesitate to call."

Following this letter, I had a breakfast meeting with the Ombudsman in the downstairs dining room, at which time she informed me in no uncertain terms that she would not be taking part in the review and that as far as she was concerned, the witness list and the questions we were sending out to the witnesses—she had no comments on them, nor would she make any comments. The next letter I have to read is confirming that.

"Mr Mark Morrow, MPP

"Chair, standing committee on the Ombudsman

"Dear Mr Morrow:

"Thank you for agreeing to meet with me this morning.

"In our meeting, I attempted to explore the history and causes of the apparent impasse which regrettably has developed between the Ombudsman and the standing committee which you chair.

"I reiterated the suggestion made for some time now that the way to avoid having the impasse become a confrontation was for me to appear before the committee acting under its regular orders of reference. In this way we might engage in dialogue as to how we can avoid conflict in discharging our respective mandates. We might then have a foundation for me to set out my response to the committee's 19th report, and for the committee to discuss my 1991-92 annual report.

"I explained to you why it would be inappropriate for me to appear before the committee in the context of the committee's current plans. To do so would seriously call into question whether the Ombudsman is free from outside

pressures to deal with the public's complaints impartially and whether the Ombudsman is trusted to carry out her mandate. The committee's actions have already seeded strong doubt in the minds of the public and public service on these points. I asked you for your cooperation in finding a means for me to be as forthcoming as possible with the committee without worsening this situation.

"Through this letter, I once again advance my request. I also invite individual members of the committee to discuss this matter with me, individually or as a group, at their earliest convenience. I hope that with open and reasoned minds on all sides we can find a way to avoid a situation which can only lead to a weakening of respect equally for the Ombudsman institution and the Legislature. I am willing to meet any time and any place with any member of the committee."

Signed by Roberta Jamieson.

The next letter I would like to read to the committee is my response to that.

"Roberta L Jamieson

"Ombudsman

"Office of the Ombudsman

"Dear Ms Jamieson:

"In your special report of August 17, 1992, you have raised the need for your office and this committee to engage in a dialogue on our respective roles and their interrelationship. We believe engaging in such a dialogue would be helpful, and would invite you to meet with us.

"As you know, the committee is currently authorized to meet for the week of August 17 and August 24, 1992. We would be pleased to meet with you during this period in order to discuss your response to the committee's 19th report, your special report and any other issues with which you are concerned.

"We would appreciate receiving your response by Friday, August 21, 1992. Please contact either me at 325-7095 or the Clerk of the committee at 325-3515 to arrange a convenient time to meet."

Signed by myself.

We then received a fax from the Ombudsman and I will read the fax out. This is after a meeting we had with the Ombudsman's negotiators in my office at 9:40 on the morning of August 20. The subcommittee met—David Ramsay, Christel Haeck, the clerk, myself and legal counsel. It's to myself.

"Dear Mr Morrow:

"This letter is in response to your letter of August 19, 1992.

"I was pleased that my representatives were able to meet with you, members of the subcommittee, and staff of the committee this morning and were able to agree without difficulty on the form of a meeting between the standing committee on the Ombudsman and me on August 27, 1992.

"As I understand it, it was agreed at the meeting:

"That the review of the Ombudsman will be suspended during the time of our meeting;

"That the meeting will be broadcast live and will be open to both the media and the public;

"That the television broadcast of the meeting will not display the words 'review of the Ombudsman's office' or any other similar words;

"pu

That in your opening remarks you state that the meeting is held under the authority of the committee's normal orders of reference and is not part of the 'review of the Ombudsman's office.'

"I am looking forward to discussing our respective mandates and their interrelationship and the beginning of a much-needed dialogue."

This is signed by the Ombudsman.

1420

We wrote her back a letter of clarification on August 20.

"Dear Ms Jamieson:

"Thank you for your letter of August 20, 1992, confirming our upcoming meeting. There are a few points of clarification concerning your understanding of the meeting, which we set out below.

"We did not discuss, as you have suggested, the notion that the committee's review would be suspended during the time of our meeting. We did agree that your appearance before the committee would not be treated as a part of the committee's present review, and that to indicate this we would ensure that the television broadcast of the meeting does not display the words 'review of the Ombudsman's office' or any similar words. We trust this also reflects your understanding of our discussion.

"You have also indicated that we agreed that I would state in my opening remarks that the meeting is held under the authority of the committee's normal orders of reference. We in fact agreed that I would simply indicate that the meeting did not form part of our current review. I would note that the committee's normal orders of reference only authorize the committee to meet while the House is in session.

"We trust that these points of clarification reflect your understanding of the arrangements agreed to for your meeting with the committee."

That's signed by myself.

Come Monday morning, the Ombudsman called my constituency office and talked to me about the agenda. We removed the word "review" from the agenda and had her appearing at 2 pm in the afternoon on August 27. As it looked, the names of the people appearing in the morning were above; she was appearing in the afternoon.

She told me she did not like this and wanted it changed so she would appear on a separate piece of paper. She did not like appearing with people who were part of the review in the morning. I advised her on the phone that as Chairperson of this committee I had no authority to do that, nor would I take any authority to do that; but I would bring it to the committee the first time we had to meet, which was the next day.

It was brought to the committee. It was agreed that we would put her on a separate piece of paper, as she requested: "Standing committee on the Ombudsman, tentative agenda, committee room 151, Thursday 27 August 1992 at 2 pm, Roberta Jamieson, Ombudsman" appearing.

I received the fax that I just read out to you at 11:58 this morning, saying that she would not be able to attend.

**Mr Perruzza:** So she had agreed to come when you listed that other sheet.

**The Chair:** It was our understanding at that point, yes.

I just felt, members, that you should be kept fully informed and aware of what is going on. I don't want to keep anybody in the dark. I would now open the floor for any questions and/or comments.

**Mr Ramsay:** I'm rather saddened that this has happened today. On my part, and I know on the part of other members of the committee, we have put in a lot of work in the last couple of weeks in order to prepare ourselves to engage in a proper series of questions with the Ombudsman. Quite frankly, I'm still hoping we can do that some day.

I think it's of the utmost importance that this committee strive as much as it can to try to keep the relationship between the Legislative Assembly, through our committee, and the Office of the Ombudsman together. I'm just sorry that it seems semantics have prevented this meeting today, and that saddens me.

I would be prepared to move that the committee try again, that we invite the Ombudsman to come and meet with us when the normal sessions of the Legislative Assembly of Ontario resume September 28, and that she appear with us for discussion under our normal standing orders.

**Mr Owens:** I want to echo the sentiments of Mr Ramsay. As a member of this committee I, and I know my colleagues, share a sense of disappointment and concern because the Ombudsman has chosen not to show up today. I think we were all prepared to ask fair and reasonable questions and engage in constructive dialogue.

In terms of the preparation the committee has gone through in the past week or so, I think we've had an opportunity to take a look at the other relationship between the Ombudsman and the Legislature, and it's my view and the view of other members of this committee that we need to vigorously uphold the independence of the office, but keeping in mind that there needs to be an opportunity for this committee to have a look at the Office of the Ombudsman with respect to the issues we've been wanting to discuss with her.

Recognizing that motions don't need seconds on this committee, I want to say that I applaud Mr Ramsay's call for temperance in this issue, and I think we need to do whatever we need to do to be reasonable. We need to go the last mile with this and to keep hoping that the Ombudsman will appear. As I say, there are issues of great substance that we need to discuss.

**The Chair:** Thank you very much, Mr Owens. Mr Ramsay, I don't have your motion in front of me, but the gist, as I see it, is that you would ask that the Ombudsman appear before us once we move back into session. Any comments or questions on the motion, please.

**Mr George Mammoliti (Yorkview):** I'm going to agree with the motion. However, I must state for the record that my patience is certainly very thin at this point. I'd like to make a couple of comments, if you don't mind.



interested in asking some questions in and around what's been happening internally in that office.

I agree with the motion. I think we should ask her to come again, but I'm not about to be pushed around as a part of this committee. I'm a member, as everybody else is on this committee, and I want some questions answered.

I'll leave it at that right now, but I think what we have to do is, as a team, maintain the relationship that has existed in the past, no question about it, but at the same time, have Ms Jamieson understand that we're not about to be pushed around; I'm not. I'd like to know what's happening. If I may, I'd like to talk a bit about how you, as I understand it, offered Ms Jamieson the opportunity to come to the committee in closed session as well, did you not?

**The Chair:** Yes.

**Mr Mammoliti:** Who chose to have a public meeting today when you agreed to have her here?

**The Chair:** It was negotiated between her negotiators and the subcommittee.

**Mr Mammoliti:** Did she suggest that we have an open meeting?

**The Chair:** Her negotiators suggested an open meeting, yes.

**Mr Mammoliti:** So now she calls us and tells us that it's not acceptable and that she can't make it. I'm not very happy, Mr Chair. I'll agree to the motion.

**Mr McLean:** Just a minute, Mr Chair. There are other people around here who have the right to speak before you put the motion, and I think I'm one of them.

**The Chair:** Mr McLean, he's just agreeing to the motion, I think. He's not calling the question.

**Mr McLean:** I thought he said to put the question. Sorry.

**Mr Mammoliti:** I will agree with the motion. I will be voting in favour of the motion.

**The Chair:** Thank you very much, Mr Mammoliti. Mr Curling, if you will, please.

**Mr Curling:** I too agree with the motion my colleague David Ramsay has put forward to again request that the Ombudsman appear before the committee when we resume, in September or October. However, I'm not of great hope that she will appear. I say that because it's become almost like Jell-O on a wall now. Every time we decide to put certain structures in place and agree to certain things, we have to agree to a number of things again. I'm just wondering what would change between now and then. What should be laid out is exactly what it is that the Ombudsman requires in order to meet. As I understand it, it goes to a certain stage, and as soon as we go forward and make those provisions—I realize it's all so strange.

1430

While I'm agreeing to this motion, of course we are taking the approach that it's for the good of all, that the cause is greater than the individual. I hope the Ombudsman herself feels that way, that having an Ombudsman in this province is extremely important and that we as a

committee respect the independence, of course, of the Ombudsman and the role she plays.

I hope that the Ombudsman also respects the role of the standing committee and the role we play. So until the time comes for her to appear, I hope in the meantime we don't just sit back and wait, but clear up what is required and lay it down properly; what is required for her to appear and if we can meet those conditions. Because at that time, we're going to hear that the i wasn't dotted and the t wasn't crossed, and we'll wonder what's happening. We have to make sure that the requirements are in place. So I'm in support of that, but not very optimistic that it will happen.

**Mr Perruzza:** I can't help but say that this morning when I got up I was really excited. I thought today was going to be the first day on a long road towards building a very substantial bridge between ourselves and the Office of the Ombudsman. I have read media lately that suggests something to the contrary, and I can only stress how important a strong and vital Office of the Ombudsman is to this province and, quite frankly, to this Legislature.

I think one of our chief responsibilities is to make that office stronger, to make it independent and to ensure that it has effective independence and authority to be able to deal with problem situations that arise from time to time throughout government.

I thought that today I would get an opportunity, along with the colleagues on this committee from all three parties, to begin to take that first step in structuring and developing that relationship with the Ombudsman.

I can't tell you how saddened I am by the news that's just been relayed by yourself a few minutes ago that suggests the Ombudsman is not prepared to come and meet with this committee at this time. I find that disappointing. However, I'm hopeful and I'm prepared to be patient, as our Liberal colleague Mr Ramsay has suggested, and extend our hand of friendship and extend another invitation to the Ombudsman to come and participate with this committee in building a relationship, in building the bridges we so desperately need in order for the Office of the Ombudsman and in order for this committee to properly do the jobs that I believe we were both mandated to do. So I will be supporting Mr Ramsay's motion today.

**Mr McLean:** I'm pleased to have the opportunity to say a few words on this. As most of you are aware, I'm subbing on the committee. I'm not a regular member of the committee, although I'm certainly pleased that I've had the opportunity to sit on it. I've read much and listened to a lot with regard to the Ombudsman committee and how it has been dealing with the Ombudsman. It wasn't long ago that I heard some members talking about subpoenas, wanting to bring the Ombudsman before this committee.

I think I'd indicated that the way you deal with the Ombudsman is through cooperation and through negotiations and discussions. I had the opportunity for many years to sit on the Ombudsman committee with the previous Ombudsman. It was a working relationship which was good, it was excellent, there was cooperation on every avenue.

I have not seen that taking place since this committee has been formed, whether it's the fact that the committee is

I have not seen that taking place since this committee has been formed, whether it's the fact that the committee is not familiar with the Ombudsman Act or the workings of the Ombudsman's office, whether it's had a tour of it or had the opportunity to discuss and talk with her about what takes place within the Ombudsman's office. It's an important office, but it doesn't function properly, in my opinion, unless it has the cooperation of the committee.

I have sat on many cases where the ministries turned down a request by the Ombudsman. It would be taken, then, through another full review with the Ombudsman in the committee, and the committee would make the recommendation supporting the Ombudsman, and that recommendation would be solved. As I mentioned to you before with regard to Farm Q, that's \$250,000 the farmer would never have got if it had not been for this committee. I can cite you many other instances where the committee helped and supported the Ombudsman.

John Bell, who was the counsel for the standing committee on the Ombudsman for many years, was a steadying influence. I feel bad that that counsel has not been at the Chairman's side on many occasions when I believe it was needed. Over those years that I sat on the committee dealing with the Ombudsman's office, the solicitor we had, Mr Bell, had cooperation with the Ombudsman. That has to come back. This committee should be reviewing the fact of the counsel and that it has the opportunity to review cases that the Ombudsman feels would be appropriate and proper.

I feel bad that the Ombudsman is not here today, but I could probably understand her reasoning. The committee should, as in Mr Ramsay's motion, have her in. I'm not so sure that you maybe shouldn't have a meeting in camera with the Ombudsman as a start. But I do believe, Mr Chairman, that the time has come for you to have the legal

counsel that we had at one time before to help advise the committee, to bring it back to where the province and the people will all benefit from the Ombudsman's office. This committee would be a lot happier if that happened.

**The Chair:** Thank you very much, Mr McLean. Are there any further comments or questions?

**Mr Bill Murdoch (Grey):** I'll first apologize for the way I'm dressed. As you know, I've been on this committee since it started, and I agreed that I would come back down from Owen Sound today to sit in on this committee to meet with the Ombudsman. I didn't find out until I was on Highway 410 that we weren't going to have this meeting. I thought I might as well get in here and see what's happening anyway, and that's why I'm dressed as I am. I would have changed, so I apologize for that.

I also talked to the Ombudsman on Highway 427; she phoned. So I did get to talk to her, so the trip wasn't wasted.

I think we should support David's motion, and I'm sure we will be able to work something out. I would like to see our subcommittee meet right after this meeting for a short session to talk about a few things. With that, I'd like to go with the motion.

**The Chair:** Thank you very much, Mr Murdoch. Any further comments or questions?

Seeing none, all those in favour of Mr Ramsay's motion, please indicate. Unanimous decision; everybody was in favour.

**The Chair:** Do we have any more business before the committee this afternoon? Seeing none, we are adjourned until the call of the Chair.

The committee adjourned at 1438.









## CONTENTS

Thursday 27 August 1992

<b>Review of Office of the Ombudsman</b> . . . . .	B- 97
John P. Kruger . . . . .	B- 97
Ontario Association of Children's Aid Societies . . . . .	B-103
Diane Cresswell, manager, communications	
Kim Way, summer student; youth in care, Perth County Children's Aid Society	
Ray Muldoon, executive director, Norfolk County Family and Children's Services	

### STANDING COMMITTEE ON THE OMBUDSMAN

- \*Chair / Président:** Morrow, Mark (Wentworth East/-Est ND)  
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Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)  
**\*Miclash, Frank (Kenora L)**  
**\*Murdoch, Bill (Grey PC)**  
**\*Perruzza, Anthony (Downsview ND)**  
**\*Ramsay, David (Timiskaming L)**  
Witmer, Elizabeth (Waterloo North/-Nord PC)

#### **Substitutions / Membres remplaçants:**

- \*Christopherson, David (Hamilton Centre ND)** for Ms Akande  
**\*Curling, Alvin (Scarborough North/-Nord L)** for Mr Henderson  
**\*Harrington, Margaret H. (Niagara Falls ND)** for Mr Johnson  
**\*Mammoliti, George (Yorkview ND)** for Mr Drainville  
**\*McLean, Allan K. (Simcoe East/-Est PC)** for Mrs Witmer  
**\*Owens, Stephen (Scarborough Centre ND)** for Ms Haeck  
**\*Turnbull, David (York Mills PC)** for Mr Murdoch  
**\*Winninger, David (London South/-Sud ND)** for Mr Duignan

#### **Also taking part / Autres participants et participantes:**

- Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)  
Marland, Margaret (Mississauga South/-Sud PC)

**\*In attendance / présents**

**Clerk / Greffier:** Carrozza, Franco

**Staff / Personnel:** Murray, Paul, committee counsel and research officer, Legislative Research Service



Ontario

B-8

B-8

ISSN 1180-4300

## Legislative Assembly of Ontario

Second session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 7 October 1992

### Standing committee on the Ombudsman

Ombudsman of Ontario

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Mercredi 7 octobre 1992

### Comité permanent de l'ombudsman

L'ombudsman de l'Ontario



Chair: Mark Morrow  
Clerk: Franco Carrozza

Président : Mark Morrow  
Greffier : Franco Carrozza





### **Table of Contents**

Table of Contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

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### **Table des matières**

La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

### **Renseignements sur l'index**

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 7 October 1992

The committee met at 1004 in room 151.

### OMBUDSMAN OF ONTARIO

**The Chair (Mr Mark Morrow):** Can we come to order, please. Good morning. I'm Mark Morrow, Chairman of the standing committee on the Ombudsman. This morning appearing before us is Roberta Jamieson who is the Ombudsman of Ontario. Welcome. I understand you have a presentation you would like to make to us. I was hoping, with your indulgence, that you might be able to tell us how long it's going to be so we can divide the questions up among the three caucuses for appropriate timing. Begin when you're ready.

**Ms Roberta Jamieson:** Mr Chair, it is my intention to make a brief opening statement and then to entertain questions and concerns. We are badly in need of dialogue and communication, not speeches, so it won't be a lengthy speech.

I believe the controversies which have arisen over the last year or so are best put behind us. The Legislature and the people of Ontario expect us to have a productive and cooperative relationship, but before we do that two things need to be clarified.

First, I want to make sure members understand why I am here today so eagerly and willingly to meet with the committee under its regular standing orders. Over the summer, of course, I was unwilling to be summonsed before this committee when it was involved in quite a different activity, but it is a total myth that I did not wish to meet with this committee. The reality is that I have sought this meeting for over a year and if we can do this morning what I hope we can do, it will be the meeting I have been hoping to have for the last three years.

After trying and trying to get a meeting, you can imagine how I felt last May when I picked up a newspaper to find that the committee was conducting an investigation into the activities of the Ombudsman. I again tried to get a meeting, quite unsuccessfully; in fact, my requests were totally ignored.

The next thing I heard was that the committee was conducting a review under the terms of reference it had recommended it be granted by the Legislature in its 19th report. Then I was unable to find any place where the Legislature had even considered that report. Instead of communication, I learned through the media that I was uncooperative, that I did not wish to be held accountable, even that I was a Frankenstein. Now really.

There was vague talk about the "goings on" in my operations, but I vigorously continued to seek a meeting under the committee's regular standing orders right up until the morning of August 27. During the course of that week, while I remained hopeful, I received no communication from the committee. The Legislature's television

channel continued to say that the Ombudsman was appearing as just another witness in the committee's review of the Office of the Ombudsman.

I sincerely believed then and believe now that for me to submit to the demands which the committee was making at that time would have irreparably damaged the independence and integrity of the Office of the Ombudsman. The Legislature created an independent Ombudsman at arm's length from political interference of any kind. The public expects me, each and every day, to safeguard that independence so that their Ombudsman can investigate their complaints about government action from an objective point of view and make findings which, if necessary, are critical of government without fear of political pressure.

To allow my office to become the subject of your review would have reduced the Ombudsman to an employee of this committee. I made it very clear to you over the course of the summer that this would have seriously undermined the independence of the Ombudsman. Having made that clear, I'm content to let that particular issue rest there unless the committee wishes to raise it again.

The second issue I want to raise has to do with my staff. I am proud to tell you I have a hardworking staff made up of excellent, motivated, competent individuals who are representative of all facets of Ontario's population. Neither they nor I appreciated the committee being used to propagate unfounded rumours and misrepresentations about them, particularly when they had no way of defending themselves. They have been disgusted by unwarranted attacks on their professionalism and their hard work in serving the public.

1010

I speak for my office and I feel called upon to defend my staff, particularly against unfair, untrue, anonymous and unattributed public statements, and I do so now.

A myth was circulated in the committee and publicly that I have experienced unprecedented turnover of staff and that 80% of my staff were seeking to bail out. The reality is quite different. If we have a close look at the facts, we will find that I have had a sum total, over the three years that I have been Ombudsman, of 30 terminations and resignations. In the three years before I became Ombudsman, the office had 40 terminations and resignations. That's not including early retirement, contract employees etc. But I say again, during the three years that I have been Ombudsman, there have been 30. In the three years before me, there were 40. My turnover rate then is approximately 10 persons per year in a staff of 129.

It was stated that the number of my staff has grown like wildfire, that I am empire-building. That's the myth. The reality is that when I became Ombudsman the staff complement was 129, and the complement today is just that, 129. There has been no change.



My staff is dismayed that the myth has been circulated by committee members that I have a massive backlog of cases. There is no backlog and my staff works very hard each and every day to keep it that way.

The myth was widely circulated that there is a delay in resolving cases. The reality is that despite the procedures the Ombudsman Act requires I follow to ensure fairness, the average length of time it takes to resolve a jurisdictional case is 102 days, just over three months. My staff can take a good deal of the credit for achieving that high standard.

I and my staff are working hard to be a model organization that offers leadership to all the governmental organizations I investigate. We have to make hard choices to ensure that we do a first-rate job, that we serve the members of the public of Ontario and members of the Legislature.

Without a doubt, I have asked my staff to work harder, to handle more complaints and to do all that with fewer resources. Sometimes that means discomfort, sometimes adjustment and sometimes frustration.

Just as in any large organization, I have no doubt that there are a few individual staff members who are not happy, and for them there is easy access to a variety of avenues within the organization to be heard. There is also a grievance procedure with three levels of internal appeal and, ultimately, appeal to outside arbitration if they so choose. The committee has a copy of this procedure. I tabled it over a year ago.

The biggest myth of all which has been circulated is that I do not wish to be accountable to anyone. The reality is that I am already accountable, as has been every Ombudsman. How? I defend my estimates. Fiscally, I'm accountable when I defend my estimates before the Board of Internal Economy, which is chaired by the Speaker of the Legislature and on which each party's House leader sits.

Second, my accounts are audited each and every year by the Provincial Auditor.

Third, I make an annual report and I appear before this committee to discuss it whenever I'm invited to do so.

Fourth, my door is open to any member of the Legislature who wishes to discuss any concern directly with me.

In the final analysis, I am accountable every time I sign my name to my findings and recommendations. I am keenly aware that I am the place of last resort, and what goes with that is a great responsibility. Like every Ombudsman, I know that the recommendations which I make are just that: recommendations. Since I don't have the power to compel government to implement them, I have to rely on reasoned judgement, the sense of fair play and respect for the integrity of my office so that my reports will neither be ignored nor ridiculed, but acted on.

Yes, I'm accountable every day. But there may be some people who feel that's still not enough. To them I would say, remember that you can't simultaneously have a totally independent Ombudsman and a totally accountable Ombudsman. Somewhere we've got to find the balance, and that's what the people who drafted the Ombudsman Act did. They wrestled with that in Hansard. They debated it. "How do we do this? How do we make sure the Ombudsman is at arm's length, outside political interference

so she can do her job, but yet is responsible for the money she spends?"

They reached a graceful balance in the Ombudsman Act, for they knew that an Ombudsman is a sign that the Legislature is concerned about complaints of the people about unfair government action and a sign that government is willing to accept criticism as well as applause. The presence of an Ombudsman says to everyone, "You are protected from unfair, arbitrary and unjust actions of governmental organizations."

The people of Ontario deserve the best Ombudsman operation in the world, and I am determined to give them just that. I know you want them to have that. Isn't there a way we can work together to make that happen?

There are many outstanding issues for us to deal with. I'm sure you have many questions and concerns, but I don't think we'll have any foundation to discuss the issues between us until we discuss the issues of where my independence ends and the committee's mandate begins, where your powers reach a limit and where my independence cannot be disturbed. We each have our mandates. You as a committee of the Legislature have them under the standing orders given to you by the Legislature. My mandate is set out in the Ombudsman Act, passed by the same Legislature. Unless we have a mutual understanding and respect for each other's mandates, we're only going to continue with the misunderstandings of the last several years.

I'm not so optimistic that I believe we're going to reach perfect agreement as to how your mandate and mine interrelate or that we'll reach it today, but I do believe that, with effort and goodwill all around, we can reach accommodation, as other committees and other Ombudsmen have, a way of working together with respect in which neither of us is called upon to compromise the high principles we're pledged to uphold. Members of the committee and Chair, I am eager to begin that dialogue today.

1020

**The Chair:** Thank you very much, Ms Jamieson. Questions and/or comments?

**Mr David Ramsay (Timiskaming):** Ms Jamieson, welcome to our committee. I really appreciate that you are here today. I'm a relatively new member of this committee; I didn't get on till about March or April of this year. Maybe because of that, I'm an appropriate person to start off, because I haven't been here, I don't have any sort of baggage from being on the committee before. I just met you today, though we've spoken on the phone earlier.

I agree with what you said today, that we've got to put the conflict that has developed between this committee and your office behind us. Because of that, I don't even want to talk about all those things you mentioned today, the recent history and some of those conflicts, because I think you're right: I think the way to start is, let's move beyond that now. I'm glad you came today and made the statement you did. Obviously, you felt it was important to do that, and I agree with you: It is important to do it.

To start that dialogue, I think we need to discuss the founding principles of your office, of this committee and what that interrelationship is if we're to get back on track.



I noted that you're saying we have to discern what the limits of our responsibility and your responsibility are. I want to start more with the approach that we should really be a team, because in looking back at the history of ombudsmen in Ontario and their working relationships with this committee, I see it as being a team, and it should be a team, because as you have said, your powers are limited to recommending to government changes that you feel should be made. This is where this committee becomes your ally and I think a partner.

I've used this myself in my constituency; in fact, it was a very successful case I brought to the attention of the Ombudsman in 1986. The Ombudsman agreed there was a problem, still faced the same challenge I did, that the agency, the Ontario Northland Transportation Commission, still disagreed. The Ombudsman brought the recommendation to this committee. The committee agreed with the Ombudsman's finding and my initial complaint, brought it to the Legislature. The Legislature agreed, and that difficulty was resolved because the Legislature ordered it to be changed.

This is where I see this partnership, on these recommendation-denied cases, that we're allies. We're here as legislators. There are only so many people in this room, on this committee, who are actually part of the government, but in general in this committee we doff those hats of being a member of the government party or the opposition party; we come here as legislators. Possibly we need to discuss the makeup of this committee; maybe it should be more equally balanced so that it's the same number from each party to get that perception more, that we're here as legislators and not opposition and government people. But we're here as legislators to make sure that things are better. Your office is a valuable asset for us as legislators to do the investigative work, to discover where the inequities are in government workings in this province, and we can work together to try to correct those. I really see that as important.

Let's talk about some of these founding principles, because I think the crux of the matter today and what's developed between us is a misunderstanding on all our parts of the difference between the independence of the Office of the Ombudsman and the accountability of the Office of the Ombudsman. I'd like to refer to one opinion that I think is cogent to this, and that's the Review of Ontario's Regulatory Agencies report that Macaulay did a few years ago. He talks about this independence. He says:

"The Office of the Ombudsman is said to be 'independent' of the executive, but at the same time is 'accountable' to the Legislature." I guess that's what I've been saying about this committee that was very important: All of us on this committee, of all parties, are not part of the executive of this government. We are here as legislators, even though there are some members of the government party here. We come here as members of the Legislature.

"What should be observed, as I have said elsewhere, 'independence' and 'accountability' are quite different. When the word 'independence' is used, at most it means 'independence of decision-making' and not 'independence of action.' The Ombudsman, like many administrative agencies, ought to be 'independent in his decision-making'"—

or hers—"but he cannot be 'independent of action,' otherwise he is unaccountable.

"May I say at once that the Ombudsman is not independent. If the Ombudsman is independent then there is no supremacy of Parliament."

I take it from the legislation that you have independence of decision-making, and I not only respect that, I'm here to protect that. I also say you have independence of the day-to-day operation of your office—absolutely; I think that's correct. But I do feel there's got to be some accountability to someone, and in the legislation it says you are a servant of the Legislature. It's the Legislature that struck this committee to be the vehicle of accountability.

My first question to you would be, are you accountable, and to whom do you think you are accountable, and how do you see that accountability working?

**Ms Jamieson:** Oh, yes, I am accountable. That's why in my opening remarks I listed the number of ways. You're right, there has been a good deal of discussion on that. Indeed, if anyone looks back at the Hansard when the Ombudsman Act was passed, the legislators of the day struggled with that and they thought about it and they talked about it. They set out in this act a number of checks and balances to ensure that there was both independence and accountability.

How am I accountable? Fiscally, for the money that my office spends every year, the taxpayers' money, I am accountable. I go before the Board of Internal Economy. Every party has a member on that and the Speaker chairs it. It's through the Speaker to the Legislature that I report. They know the balance between accountability and independence. So fiscally, I report to them.

Financial transactions: Again, my act says the auditor audits me every year, and he does. For day-to-day operations, the act said the Ombudsman could lease premises, could hire her staff, deal with conditions of employment etc. Why? So that she would be at arm's length, so that government could not, by clipping or threatening to clip the purse-strings, compromise the ability of the office to do a good investigation. They also made sure that the term of office of the Ombudsman was long enough to survive the length of a government. All these things were to make sure the office was beyond the reach of political influence.

So there was accountability, and I have accountability every day, fiscally to the board, the auditor, and to this committee through—let's talk for a moment about how I deal with this committee, the role of this committee, because I think that's the crux of your question.

This committee is here for the Ombudsman—again, it was discussed when it was created—when the Ombudsman has exhausted all avenues to convince the government to accept her recommendations. Then I bring it to the committee and you bring the public scrutiny to bear on the government's actions. You are the ultimate weight of the Legislature and, hopefully, through this vehicle, you will pressure the Legislature to accept the recommendations. That is the primary role of this committee, as I see it.

Am I accountable to the Legislature? Yes, and there are very clear ways for me to be accountable. Am I accountable through this committee? I think not.



This committee also deals with annual reports, and it's on that that I want to pick up on an earlier point you made. The annual report raises questions of policy that we should be discussing and that I'm sure are of interest to legislators. I am anxious to get into some of those.

1030

**Mr Ramsay:** Just one question, because you talked about the recommendation-denied cases: Because I'm a new member of this committee, how many of those have you brought to this committee over the last three years?

**Ms Jamieson:** Over the last three years, since I have been appointed—let's look at the last two years. We brought no cases to this committee. Why? Because the cases are being resolved. When I was first appointed, I was in on the tail end of a case that had been brought by my predecessor. That was year one. The next two years—and I have worked very hard at this—we brought no cases to this committee because in each and every case we have been able to convince government that it should implement the recommendations. Have I compromised? No. Have I watered them down so that government would accept them? No. Has it been easy? No. Sometimes I've had to go to deputies, sometimes ministers, and last year, as you know, I had to go to the Premier on the case of the Ontario Human Rights Commission.

That's my process. I'm supposed to go through all that before I go to this committee so that I can demonstrate to the committee when I come here that I have tried it all and I still can't make government move. That's when I come to the committee.

**Mr Ramsay:** So you have no objection to eventually coming to the committee.

**Ms Jamieson:** Next year there might be 15, I don't know. You'd never know that. The fact that there is an avenue to the Legislature, though, is important because that makes public servants sit up and take notice and take the Ombudsman seriously. Now, do we need a standing committee to do that? I say, in my special report, probably not. Maybe a special committee, because there is not weekly business to be done from me.

**Mr Ramsay:** I think I should talk about that, sort of what the assembly's assignment of responsibilities to us is in regard to the Ombudsman. It has changed over the years, but at present really it's, as you've said, to review the Ombudsman's annual report. It's also the formulation of general rules for the guidance of the Ombudsman in the exercise of his or her functions under the act, as are appropriate, and to review cases referred to the assembly by the Ombudsman.

We also receive and respond to communications from the public concerning the Office of the Ombudsman, and we deal with those. Actually, that's where a lot of our day-to-day, week-by-week activity comes in as we get these communications and we make a decision whether we are going to pursue them or not. I'll allow some other people to get into that.

One question I might have about accountability is that I think maybe one of the problems is that when we talk about accountability—and I know the Australian review of

the Office of the Ombudsman had looked at this—you're accountable to too many different people and bodies and maybe we shouldn't have all these different locations of accountability; maybe the Office of the Ombudsman should be accountable to one body. You have the standing committee on public accounts for your estimates and the Board of Internal Economy and our committee to the Speaker, if you will, being the head of the Legislative Assembly. Maybe accountability should be concentrated and centralized in one place and maybe this committee is the place where all that function should happen. What would you think about that, if accountability were centralized in one place?

**Ms Jamieson:** If you're asking me if I think it would make sense to centralize it in this committee, I tell you frankly I have difficulty with that. This committee, it's no secret, is dominated by government members. It would be very difficult for me to convince the public that I am doing investigations from an objective point of view when I'm answerable to a committee dominated by government members. I did an opinion survey just after I was appointed to find out what the public knew about my office and what they thought. The area they were most sceptical on is independence. So I have great difficulty with that.

I also should say that I'm quite comfortable with the means of accounting. I don't find it confusing in the least or complex. I'm accountable. I have no problems dealing with the board, and it asks tough questions. It's no piece of cake defending your estimates there, but that's okay because that's appropriate. The balance there is right. They understand independence and accountability. The Speaker chairs that.

I know there's been some talk that maybe all the officers of the Legislature, or some of us, should relate to the committee on the Legislative Assembly in some way. I don't know where that's at, but I can tell you, for my office to be accountable to this committee, frankly, I think not.

**Mr Ramsay:** Is that your main objection? I share your concern about that. This committee basically is structured like any other legislative committee in that it represents the balance of the sitting members in the House. That is right and proper in a democratic state for all our committees, but I think you raise a very good point and I agree with you that probably this committee should not be structured thus and I think we should maybe change that.

That gets me into what we're doing here. I think this is where a basic misunderstanding has occurred, and it may have to do with the wording of the mandate the Legislature gave us over the summer as to what we were about. When it said we were to do a review of the office, as we had asked for in our report, the misunderstanding may be that we were not looking to do a review of the workings of your particular office and how you run the Office of the Ombudsman.

We have an act here that is 17 years old. As legislators we're here day to day to make sure that everything is modern, up to date and the best we can do at the time. From time to time, in all aspects of government, we take a look at legislation to see if we should be bringing it into



modern times. What we want to do is take a look at the Ombudsman Act, because much has occurred in 17 years in regard to the rights and freedoms of people in the country, the ways they have of receiving justice. So we're reviewing the legislation. I wish, on second thought, that's what we had requested because that's what we meant and that's what the order read, because we're not reviewing your office; we're reviewing the legislation of the Ombudsman to make sure it reflects today's realities.

**Ms Jamieson:** I appreciate, Mr Ramsay, that may be what you would like to do as a member and I respect that. I have great difficulty, however, given the way this all came about, accepting that. I think that's what you wanted to do and I hope that's what will happen, but that is not what the history of this subject is.

I speak in my special report, which I had to table because I couldn't get a meeting to discuss it, that if you want to do a review of the act, of some of the—the committee asked me some questions last year about jurisdiction and so on. I spent a lot of time on that subject and I put it in my annual report and I'm anxious to talk about it, but that's not how this review came about.

For a review to be done properly, involving an office of an officer of the Legislature, I hope there would be some respect extended. I hope there would be a discussion with that officer about the terms of reference, suggested questions, suggested witnesses, but none of that happened in this case. If you look at the questions, you will see they are not about the act solely; they are about all kinds of other things. They are intrusive and they cross the line and that's why I had such difficulty.

I'd be happy to discuss, however, how we can do the other: how we can look at the act. It is 17 years old. I have some things to say about it, I've been saying them in my annual report and I'd love to expand on them. So if we can get on to that, terrific.

**Mr Ramsay:** My last comment would be that I hope, on a subsequent meeting to this, that we could sit down together, all of us, and sort of establish terms of reference of how together we could proceed, because we don't want to do this independently of you. You, right now, are the best expert in this province as to the operations of an ombudsman's office and obviously would be the person with the best ideas of how to improve how an ombudsman would act in Ontario. We want to work with you on that to make sure we have the best Ombudsman Act in the world. I think we share that goal and I hope after this meeting we'll be able to sit down and work on that together.

1040

**The Chair:** Thank you very much, Mr Ramsay. Mr Mammoliti, if you will, please.

**Mr George Mammoliti (Yorkview):** I'm next, am I? We're not going in rotation, then, I assume. Thank you very much for coming. I appreciate having the opportunity to ask you a few questions personally. There are a few things I need to ask. I think you're right in terms of some of the comments earlier that some of the allegations that had been made may be unfounded. That's one of the

reasons I need to ask some questions, because I'd like to find out whether or not some of those allegations are true.

The only problem I have at this time is that I might have to hold on to some of the questions I wish to ask, for a while anyway. Perhaps it might be a good idea for me to come and see you and ask you separately. The review is certainly one thing, and I think that certain questions that pertain to staffing and some of those allegations might be another, so we may want to talk about that separate from the review, but there are a couple of things that I'd like to ask in response to some of the comments you've made.

First of all, a comment from me. I disagree with you in terms of accountability. I don't think that we would be, as a committee, a servant of the Ombudsman. I think that the Ombudsman would be the servant of the Legislature, and this committee being a part of the Legislature, I think that it would extend to this committee. You obviously disagree with that, and I think we're going to have to do some talking in terms of how the act should change to make that a little clearer.

I wanted to be very specific about that because I really believe that this committee should have a role to play and that this committee, as members of the Legislature, is accountable to the public. The public expects this committee to deal with complaints and areas of complaint, as it has done in the past, and as other ombudsmen haven't really had a problem with that, I think this committee does have a role to play. I want to talk a little bit more about that and how we would achieve that.

Having made that comment, I'll go on to how I agree that in the past communications have lacked between this committee and your office. Whose fault that is, I don't know. I think we have a lot of work to do in terms of communicating a little better and working together.

You mentioned in your opening remarks that you had attempted to meet with this committee a number of times and that somebody had chosen to ignore you. Perhaps you want to answer who ignored you, in your opinion. What avenue did you take to try to get meetings with this committee?

**Ms Jamieson:** You've covered quite a few subjects. First, let me go back to the beginning. Do you have a question to put on the issue of staffing?

**Mr Mammoliti:** Yes. I'll get to that later on.

**Ms Jamieson:** I'm troubled by the vague comments.

**Mr Mammoliti:** I'm going to respond to the areas that you touched on in terms of staffing in your opening remarks.

**Ms Jamieson:** I don't want to let it go too far, so why don't you put your question, if you have one. Alternately, you're free to come and see me any time if you have a concern.

**Mr Mammoliti:** I have a few questions. First, whom did you try to get hold of? What avenue did you try to take over those few months that you talked about in terms of getting in front of this committee? Did you write letters? Did you make phone calls?

**Ms Jamieson:** I wrote letters. We made phone calls.



**Mr Mammoliti:** Whom did you write those letters to?

**Ms Jamieson:** It's all on the record. I wrote a number of letters to the Chair. We made calls. Those are all a matter of public record. I believe you tabled a number of them, the Chair did and there are others. You have them.

**Mr Mammoliti:** They stated that you wanted to have a discussion with this committee, a meeting with this committee.

**Ms Jamieson:** And the subject of the discussion: to sort out mandate.

**Mr Mammoliti:** The word "ignored" troubles me. You said that you were ignored. As a part of the committee, I feel an obligation. If we ignored you in any way, I'd like to know how. If you feel that your letters were ignored, were they not responded to?

**Ms Jamieson:** As an officer of the Legislature, one expects that when you ask to meet with the committee that you relate to, that you rely on, that is your partner in making sure government cleans up things that are wrong, and you don't get a positive response, I call that ignored. If that goes on for months, I don't know what you call it; I call it ignored.

**Mr Mammoliti:** Perhaps the Chair might want to take a note of this, because I certainly would like to hear from the Chair later on.

**The Chair:** Mr Mammoliti, I am going to give a clarification here. We can only meet with the Ombudsman while we are in session. While we are not in session we have to be under special orders of the House to meet, such as we were this past summer.

**Mr Mammoliti:** Okay.

**Ms Jamieson:** I don't know how much you want to get into this. I don't really, but the record stands. I asked for meetings in the spring, particularly right after you tabled the 19th report. The House was in session. Do you want to go on to your next question?

**Mr Mammoliti:** Yes. The word "ignored" still bothers me.

**Ms Jamieson:** Me too. Imagine how I feel.

**Mr Mammoliti:** In my opinion, I don't think the Chair ignored you. I think the Chair, with the subcommittee of course, followed procedure. So I'm not too pleased about the word "ignored."

You talked, in your opening remarks, about 30 turnovers in your stay so far in the Office of the Ombudsman, 40 in the previous Ombudsman's stay and 30 turnovers in the last two years, I believe, in your stay. Am I correct in saying 30?

**Ms Jamieson:** Three; 30 in three.

**Mr Mammoliti:** Where does 30 come from?

**Ms Jamieson:** A calculation.

**Mr Mammoliti:** That's 30 in two years?

**Ms Jamieson:** Three.

**Mr Mammoliti:** Three years, I'm sorry.

**Ms Jamieson:** And 40 in the preceding three, before my time.

**Mr Mammoliti:** Yes, you made that quite clear. With regard to the 30 in your stay, in terms of moneys, in terms of fiscal responsibility, how much did it cost the taxpayer to pay the individuals who left in terms of severance, court cases, lawsuits or whatever else has happened with those 30?

**Ms Jamieson:** Mr Mammoliti, what is your concern? I don't understand what your concern is.

**Mr Mammoliti:** I'd like to know how much the taxpayer paid for these 30 individuals who either got fired, were let go or resigned.

**Ms Jamieson:** If you're asking if I was fiscally responsible during those times, absolutely. The Ombudsman has to live up to the laws of the province of Ontario. I know I have to. If I'm going to criticize other people, If I'm going to be able to look at government with a critical eye, I'd better be pretty close to model administration as I can get. Fairness? Yes. Is there an open process? Yes. Do we take pains to be fair? Yes.

**Mr Mammoliti:** My question is, how much does it cost?

**Ms Jamieson:** Am I fiscally responsible? Yes. The auditor, frankly, has looked at each of those years. I have received exemplary audits. As a matter of fact, he looked at just that question, as he did with a number of agencies, and there is no issue.

**The Chair:** Just for a point of clarification, please, there has been a comment made here that I feel I as Chair and we as a committee must address and clarify.

On May 28, 1992, the committee tabled its 19th report. On June 25 you responded. On July 21 the committee wrote the Ombudsman telling her we were beginning our review and required some background material on the work and the operations of the Office of the Ombudsman. On July 22 the Ombudsman wrote to say that our letter dated July 21, 1992, does not mention her request of June 25, 1992, and stated that a meeting must be held before she would consider giving consideration to the committee's letter of July 21. On July 23, 1992, the Legislature passed a motion which authorized the committee to hold hearings in August for the purpose of conducting a review of the Office of the Ombudsman. On July 27 the committee writes her, acknowledging the letters of June 25 and July 22, 1992, and invites her to appear before the committee. On July 29 the committee writes the Ombudsman to invite her, and on and on. I just felt at that point that there was a clarification needed.

Go ahead, Mr Mammoliti.

1050

**Mr Mammoliti:** The 30 staff turnovers over the last three years cost how much money in terms of severance?

**Ms Jamieson:** Mr Mammoliti, I would really like to know what your concern is. What's your issue? Do you think we're spending too much money? Do you think I should account to you for how I spend every nickel and dime in my office? This line of questioning is the very line of questioning I spoke about earlier. It's the very line of questioning I saw in the summer, and I saw you pursue it. I am really wondering, what is the point of all this?

**Mr Mammoliti:** I'm responding to your opening remarks.

**Ms Jamieson:** I'm really wondering if this is about attacking the credibility either of me as a manager or of my office. I really wonder, and I'm sure the public is wondering, what the motivation is for this questioning.

**Mr Mammoliti:** I think that you've put your back up against the wall for no reason at all. You had made opening remarks that referred to 30 staff turnovers in three years.

**Ms Jamieson:** Right.

**Mr Mammoliti:** My question to you is, how much did it cost the taxpayer to let these staff members go? I don't think that's a harsh question. I don't think it's a question that can't be answered.

**Ms Jamieson:** I don't think it's a question that can't be answered either. I wish it were a question that you would call me up about personally and ask. You have never chosen to call me on any of the issues that you have raised. Indeed, the Board of Internal Economy is the correct place to put that question.

**The Chair:** Thank you very much, Mr Mammoliti.

**Mr Mammoliti:** Mr Chair, I'm not finished with my questioning.

**The Chair:** We will come back to you, Mr Mammoliti.

**Mr Mammoliti:** Will I get an opportunity?

**The Chair:** Yes, you will.

**Mr Bill Murdoch (Grey):** We certainly appreciate your being here. I guess I have to take some—I don't know what I'd call it, but I wasn't too happy with some of your opening remarks too because, as George was saying about being ignored, it's the first I've ever heard that we ignored you. I sort of feel bad like you do, because I thought you were ignoring us, and I didn't feel so good about it either. As you know, you talked to me once and I did come down to a meeting that I thought you were coming to, and unfortunately you couldn't come. So I felt a little ignored too. If we were ignoring you or if you felt we were, I certainly am sorry for that, but I don't think this committee ever in any way wanted to ignore you and went out of its way to do that. So I want to clear that up, because if there were some problems with correspondence, then I guess it happened, but we certainly would like to talk to you any time we can, as you know.

There are two different things. There's a review and there's what you're doing today, just talking as Ombudsman to the committee. But we certainly didn't ever go out of our way to ignore you and have you here to discuss things, because this is why we're into this problem. We certainly are doing the review, like David said, just because in 17 years there hasn't been a review, and I think something should be done. Maybe some of the things we're doing upset you, which is unfortunate, but when you do reviews I think all kinds of things may happen in reviews.

We have in the past tried to work with your office and with you on some cases. Now, you mentioned that you haven't brought any cases to us where you're having a problem with the government. But then where do we sit in this whole spectrum when people bring cases to us where

they feel they've had trouble with your office? Nowhere have we stated that we think we should ever, ever have anything to do with your decision. That's your decision, and that's what you come up with. But the public out there sometimes think maybe they haven't been dealt with fairly, so they come to this committee. This committee has in the past, I know, requested information from your office and we haven't got it, because you felt that you shouldn't give to us. Now, in the past, other ombudsmen have told us that they used to try to work these things out. We were never, ever trying to, as I say, get into your decision-making, but maybe there's something wrong going on in your office, and we're here to work with you, not against you. We wanted to say, well, you know, "Tell us what happened."

I know you mentioned that all the cases are being looked at, but some people seem to think it's taken over two years. I know you said that was myth, but I think probably if we look at it, there are some cases that have taken a long time. Maybe there are circumstances why that's happened, but I think as a committee we have to know that, because there has to be some accountability with you to this committee to the Legislature. That's what we are, the legislators, and after hearing what David said about maybe this committee should be evenly represented—I don't know, all other committee aren't—that's something we could look into, the whole picture of it, when we're doing a review. Maybe even the government of the day may agree with that. I don't know; we've never discussed that. But there could be things like that.

So there's this big frustration built up with us towards, say, your office, and maybe in the same way you have a frustration with us. That's why we're here today, hopefully to start a dialogue.

I can agree with you on what's happened in the past. We can just throw it all out, okay? Let's start today new. But boy, if we're going to start today new, then we have to ask you some very direct questions, and you may not like some of them, but I feel that you're too defensive. I'm just telling you this is what I feel. You're thinking we're out to get you for some reason, but that's not the case. We're out here just to find our role and how we work and give our public a better service, and that's with us working with you on cases you can't solve with the government and maybe cases people feel you haven't solved properly for them.

What do you think of that? That's what we're trying to get at here.

**Ms Jamieson:** I welcome the fact and I am very hopeful that this will get us off on the right foot. The pointed questions I welcome, because that will help us to straighten some things out. I think that's where the disagreement, or the perception—a misperception has happened.

Your first question: What do you tell people who come to you? I think you tell people that the Ombudsman is the place of last resort. That's why we created it. It's a place where people go when, as Mr Justice Morand said, they've lost their case with government. This is one last chance. "Ombudsman, you look at it and tell us if there's been something unfair here or not."

Nobody likes to hear no. Let's be frank.



**Mr Murdoch:** I agree with you there.

**Ms Jamieson:** Nobody likes to be told no, but what I suggest you tell people who come to you is: "We created the Ombudsman as the place of last resort. If she said no to you and you have concerns about it, write her a letter, because I know she has a system in her office that will look at complaints from the public about how she did her job. And if you're not happy with that, then I'm sorry. We've set the Ombudsman up to be the place of last resort."

**Mr Murdoch:** But we are a committee to work with you, so is there a problem, though, that if they've come to our committee, are you and our committee working? We're not saying you have to change anything, but at least come in to us and say, "This is the way it is and this is the case."

Here people are willing to send us their documents and things like that—and I have no problem with that, them signing in that way—but now we clearly have a problem.

I agree with you: When somebody's turned down, they're never happy. I've been a politician for a long time and I know that. But the people out there have elected us as politicians too, all over Ontario, and they expect us to have some accountability to them and be able to work with you.

I'm saying this is where I think in the past—I've been here two years, and we've had some problems and we have had some cases.

**Ms Jamieson:** That's right.

**Mr Murdoch:** You have responded quite clearly that you did not want to discuss them with us. It's fine for us to help you, but I think you have to help us.

**Ms Jamieson:** I agree with you. We have to find a way of giving this committee the information it needs to do its job, but a way also that respects the independence and the confidentiality that I have to live up to.

This is not a creation of Roberta Jamieson.

**Mr Murdoch:** I understand that.

**Ms Jamieson:** These are things in the act I have to do, that the legislation requires of me.

On the people who come to you, if they're not satisfied, then I think the committee has to be clear. Either the Ombudsman is the place of last resort or it isn't. If you say to people, "Come on over to us when you're not happy with the Ombudsman," you are raising another expectation that somehow the committee is going to look at their file, find something wrong and overturn the Ombudsman.

**Mr Murdoch:** No, that's not our—no, we've never made that—

**Ms Jamieson:** And we both know that's not the case.

**Mr Murdoch:** That's right.

1100

**Ms Jamieson:** I guess what I'm saying is that we've got to find a way of first being clear between us and then being clear with the public about what can or cannot be achieved, and we have to both be comfortable. You're right that we have had some problems over the last year. I'll tell you why. When the committee tabled its report last March, it attempted to instruct me, in 10 out of 22 of its

recommendations, on files I had seen. Now, that is over the line.

In the last several months, as recently as yesterday, we've gotten calls on files, both closed and open, that I am reviewing, from staff of this committee. That is not acceptable. You wonder why I'm confused and somewhat annoyed with this. Frankly, that's why. I think there's good reason, and yes, we have to talk about this to straighten it out, because we've got to get on the right foot.

**The Chair:** Thank you very much. I'm going to interrupt you for a second, Mr Murdoch, because I understand Mr Ramsay has a point of clarification.

**Mr Ramsay:** It's a supplementary on that. I'm just wondering if there's a misunderstanding here of how the relationship worked in the past. Is it not your understanding that in the past the Ombudsman and this committee worked on these cases that came from communications from the public to the subcommittee of the Ombudsman committee of the Legislature, cooperatively worked on resolving these things, not the outcome of the case but because the complaint came in that it took three years to resolve it, whatever the case was, or that there was a body, possibly, of evidence that the complainant brought in that the complainant did not feel was looked at thoroughly, whatever that complaint was, but again, not on the decision? Are you saying that you're changing that policy?

**Ms Jamieson:** No. I think that if you look back over the history of the office, different committees and different ombudsmen have worked differently. There is no one way they have functioned, and that's what we need to find: the accommodation. How can I give you the information you would like to have, and how can you respect my job and the mandate?

For example, if you have an individual concern being raised with you about a file and the committee has written me, what I answer back to the committee is, "Look, I can't discuss that particular file with you, the specifics of it, but I can tell you my process, my policy, my procedure." I have done that. Over the last two years, there are a number of letters back and forth on that. But on the specifics of the file, I'm afraid I just can't do that under the act. But on what my process is, absolutely. What's my procedure? Absolutely. I invite the committee to give me ideas for improvement. I've done that.

**Mr Ramsay:** I think we certainly need to work on that, because it's my understanding that when the committee has asked for information we feel is not pertinent to the case itself, but to the process of the case, there hasn't been that cooperation because you see your operation as absolutely, totally independent in every way.

Anyway, let's put that past us, because I think we need a new slate here. I certainly don't like some of the things that have happened here this morning already. I think it's destructive to your office and I think it's destructive to this committee, the Legislature and the government of Ontario. I want to start, as Mr Murdoch said, with a new slate here. I think we need to do that.

I'm willing to put everything behind us that is there, where it properly should remain. I think we need to start



today and I think we need to, as of today, commence a new working relationship. I think we need to have more time, and maybe time in camera, working together to work out procedures that can be acceptable to both parties as to how we deal with communications we get, because there is the principle of the supremacy of Parliament in this country and people do come to us in the end to say they weren't dealt with fairly. We've got to work with each other and I think we can find that accommodation.

**The Chair:** Thank you very much, Mr Ramsay. Mr Murdoch, will you continue, please.

**Mr Murdoch:** That's the main thing, and David said it well. I'm willing to forget about what happened in the past. It's not as if it was a big mistake or anything. I just think we got off maybe on the wrong foot and a lot of us were new. People do come new to this committee and they wonder why we can't do that. Like David said, maybe we'll have to go in camera for a few meetings to flood some of these things out.

But we certainly do have to find a better working relationship, because the fact is that people do come to us, whether we like it or not, and say, "Why is this happening?" We have to work with you to give them the proper answer, I think. It has worked in the past, but you may not like some of the ways we want to work with you, and then I guess we're going to have to hammer them out.

That brings me back, then, to the review we were doing. That's why we did a review. If we're going to come up with a new relationship, then let's review the whole thing, because with that review we're going to hear from expert witnesses about some things that maybe we should do. We'll put them all into the pot and try to stir them around and come up with an excellent working relationship.

I'm sorry you felt that the review was against you personally. I think you've taken it that way, it's just the feeling I get back, and it wasn't. It was that if we're going to come up with a good relationship, then we have to do it this way. Since it was 17 years and nothing's ever been done, I think we're quite justified in doing that.

Maybe, as you said, we should have talked to you first. Well, we're having problems getting you here. You said you were having problems in getting here, so obviously there have been some communication problems. Now you're here. It's a good start, but I'm just saying again, don't be so defensive. We're not here for Roberta Jamieson; we're here for the Ombudsman, whoever it may be.

**Ms Jamieson:** I certainly look forward to that. Let me be clear: This is not about Roberta Jamieson; this is about your officer of the Legislature, the Ombudsman. Roberta Jamieson took the oath and was appointed by the Legislature, but I have to operate within the act I was given. That's my job as an officer of the Legislature. I have to interpret that the best way I know how, with the best advice and with the public interest at heart. I think you're interested in honouring that just as I'm interested in respecting the role of this committee. I think you're interested in respecting the role I have to play, and I look forward to that.

Maybe I could offer something to the committee. We did something a long time ago now that I really think badly needs to be repeated. We had an orientation session where I went through the investigative process, where I am involved, where the committee comes in and so on. We had quite a good discussion and we reached an understanding. This was about in the spring of 1991, I believe—April, if my memory serves me. We reached a good accommodation and we even wrote it down. But then, by the fall we didn't honour it, and so maybe we better get back to that and have a discussion and clarify, because you're right that there are a number of new faces around this table. I think that might well be worthwhile, and I volunteer to host that.

**Mr Murdoch:** Sometimes we may not agree with the way you interpret it, and that's why I say that's where we've got to sort that out.

**Ms Jamieson:** That's okay. That's healthy sometimes.

**Mr Murdoch:** Yes. We've got to come to an understanding that we both agree with it. Is Norm—are you going to—

**The Chair:** No, that's not our rotation.

**Mr Murdoch:** All right, Mr Chair. I'll let you take somebody else then.

**The Chair:** Thank you very much. Ms Akande, please, if you wouldn't mind.

**Ms Zanana L. Akande (St Andrew-St Patrick):** I recognize and I appreciate your respect for the act and the fact that you're bound by it. But I think we'd all recognize that there's the act and then there's practice, to which Mr Ramsay had referred.

I think that basic to the problems here is how you see the players' involvement and where you see that it lies. You have recognized that the Office of the Ombudsman is the creation of the Legislature. You are independent in the decisions you make, and that's important. But you are responsible for your actions, or for how your office is carried out, to the Legislature.

The problem seems to come in where you accept that this committee lies. I believe I would have it seen as the representative of the Legislature, and that's not an opinion that is without support. As a representative of the representative of the Legislature, if this committee in fact represents the Legislature, then, using my old geometry that things equal to the same thing are equal to each other, that would make the Ombudsman responsible to this committee.

I know you stated just a while ago that is not how you see our function, yet that, I believe, is the crux of our difference in terms of opinion which makes our working together or our communication difficult. So I think that is the area that should be discussed rather than avoided, because that is the problem.

It's not a question of your independence in making decisions. I mean, if you didn't have that, it would make your office impossible and not able to fulfil the responsibilities it has. It is how you relate to this committee, and how you relate to it must depend upon what you see it as and your responsibility to it. I'd ask you to explain that to



me. How do you see this committee in relation to or in comparison to how you see the Legislature in total?

1110

**Ms Jamieson:** You're right. The Ombudsman is a creation of the Legislature by the act. I'm an officer of the Legislature, and there are a number of officers. The way I see my relationship with this committee—I have read the standing orders and I have read the debates when it was created. The thinking was that the Ombudsman needed someplace to take those cases which she could not convince government to put right. She needed to be able to bring them to the lap of public scrutiny under the public's eye—a channel to get to the Legislature, representatives of the public.

It's for that reason that the committee was created. That's a very important role, whether there are 16 cases or none. The fact that governmental organizations know they potentially could be brought here to defend their actions in front of the public is extremely powerful. I see that as the central role of this committee.

Now, there are other ways that the Legislature has obliged me to be responsible and accountable. The act says, "You'll be audited." The process that's been created is to go to the Board of Internal Economy fiscally. So there are other ways.

There's one other role I do see this committee being involved in: the annual report. That is a vehicle for the Ombudsman to relate and to raise issues with the committee, with legislators generally, about trends in complaints, about policy questions, about matters that have been raised with me that I can't deal with and that I am troubled about: federal matters, for example; municipal matters, for example; issues that I think should have debate, services in the north, for example. Those are all matters I've raised in my last annual report that I would hope would be the subject of discussion among legislators. That's my way of bringing those forward.

**Ms Akande:** All right. As you've described the function of this particular committee—I know that you also report to other groups—you see it in two ways: first, as a way of your relating difficulties within the system, within the structure or policies that you think should be studied by the Legislature or by this or some other group, so as a vehicle for communication and possibly for study; and second, as a way of effecting what essentially are your decisions. That is where, I believe, we differ, and that may be the item we have to spell out, because I believe this committee sees itself as the representative of the Legislature, and as the Ombudsman is responsible to the Legislature, this committee sees the Ombudsman as being responsible to us. That is the difference on which this whole confusion, if I can call it that, or concern, pivots, and that is where we will either have to decide to agree to disagree—and I don't think that would be profitable—or to go forward in a way that puts accepted practice into a change in legislation which spells it out specifically so that continued confusion won't occur.

**Ms Jamieson:** What are the subjects the committee feels the Ombudsman should be accountable to it for if it's

not decision-making and it's not fiscally related? What are the subjects the committee feels the Ombudsman should be responsible to it on?

**Ms Akande:** I think that's a good discussion, and we'll have it, but if I can put it generally—so that everybody else can add the specifics, because I think now we're getting to it—it's the operation of the office.

I have to say this as an aside: I'm happy to see that you're generalizations are also feminine. For most people they're masculine, but you have been speaking as "she."

I think it's the operation of the office, and I think that rather than talk around it, we should speak to it.

**Mr Jamieson:** Do you want me to speak to it, or have I been clear enough already?

**The Chair:** Just for a point of clarification, I will clarify that by reading our standing orders.

"Standing Committee on the Ombudsman which is empowered to review and consider from time to time the reports of the Ombudsman as they become available; and, as the Committee deems necessary, pursuant to the Ombudsman Act, section 16(1), to formulate general rules for the guidance of the Ombudsman in the exercise of his or her functions under the act; and, to report thereon to the Legislature and to make such recommendations as the committee deems appropriate."

Does that help you at all, Ms Akande?

**Ms Akande:** Has Ms Jamieson a copy of this?

**Ms Jamieson:** Yes, Ms Akande, I have it right in front of me.

**The Chair:** Would you like to respond to that?

**Ms Jamieson:** Well, only in so far as that I think it's very clear under the existing act that the operations of the Office of the Ombudsman are reserved to the Ombudsman. If the committee feels that's something they would like to change, then you may well be talking about legislative change. You may also be talking about a change in the standing orders.

Of course, that's the prerogative of the Legislature; I respect that. But as it is today, if you look at section 8 of the Ombudsman Act, for example, you will see that it's very clear. I ask you again, maybe it would be instructive for us all to go back and read Hansard again when the office was created, because people struggled with this question then. How can we have an arm's-length agency and say, "Yes, we're freed up for criticism," but then tug on the purse-strings? You can't do it and have the public respect the office. That's the problem.

**Ms Akande:** If I may, Mr Chair, just as an addendum to what I have said: You're quite right, and I think that's why the purse-strings are dealt with specifically by an entirely different body from this particular committee: the Board of Internal Economy. They deal with that and your budget; this committee does not deal with that at all. I agree with you: It would appear that we could tug at the purse-strings if we did it like that, so they made that quite clear.

I'm rather new to this forum, but I think what has happened is that previous ombudsmen, I understand, were able to work out in practice what we now have come to a



disagreement about; I'm talking in terms of your office and this committee. Therefore, it may be because you're looking at a more strict reading of the act, I don't know. But I think that's the crux of the difficulty and those are the issues.

1120

**Ms Jamieson:** The last thing I would say is that in my special report I quote from the first two ombudsmen. I have to tell you that this issue has been a source of tension from the beginning between the Ombudsmen and committee. My analysis is this: When the office was first created, there was the debate, there was the understanding, there was the respect, it was independent, it was understood. As time went on, committees started to try and relate to the Ombudsman as they did every other body that was involved with a legislative committee and governmental organizations. We kind of forgot about that independent relationship, then we remembered again and then we forgot again. It's a cyclical thing.

I thought, when this was going on, is this only this Ombudsman? No, it isn't. I went right back to the time of Maloney and Morand, and they too experienced this tension, they too experienced the difficulty. It's that delicate, graceful balance that we have somehow got to reach so that I can do my job and you can do yours, for the public.

**Mr Norman W. Sterling (Carleton):** I'd like to begin just by clarifying something we talked about. The language of standing order 104(h), which the Chairman has just read to us, would certainly convey to me that this committee is empowered by the Legislative Assembly to look into matters relating to management of your offices, to doing, in fact, what I believe this committee has done with the ombudsmen before. Is your problem with the standing order, or do you think the standing order in effect doesn't have a legal backing within the act? Is that your position?

**Ms Jamieson:** You and I would disagree that the committee has a mandate to look into management of the Office of the Ombudsman.

**Mr Sterling:** You don't think that's what that standing order says.

**Ms Jamieson:** No.

**Mr Sterling:** Okay, so you think the standing order is incorrect, that it doesn't give us that mandate.

**Ms Jamieson:** And I think every one of my predecessors has thought the same thing.

**Mr Sterling:** But I want that clear, because I think then we should change the standing order to give us that right.

The other part I had found intriguing about testimony to date was that you refer to the Board of Internal Economy. You were concerned about the impartiality of this committee. I believe the history of this committee, regardless of whether we were in a minority Parliament, whether we were in a Conservative government, a Liberal government or an NDP government—although I don't think the NDP government has really been able to deal with it and has a historical context, because there hasn't been the relationship that existed before—is that this committee probably

has acted more independently than any other committee of the Legislature that I know of.

The Board of Internal Economy, I think people should know, is always dominated by government members. That is even true in a minority Parliament, so that committee is less objective than any other committee of this Legislature. It's chaired by the Speaker, but dominated by government; they are government ministers who sit on that particular committee, so in terms of the voting power of the Board of Internal Economy, it is always dominated by government members. Therefore, to me, in terms of pure numbers, you would have a better break, or anybody would have a better break, in terms of objectivity, on another committee.

Maybe we do need to change the standing orders to have an equal representation in here of all parties. Quite frankly, if I were in government, I don't think I would fear that, but I don't think that has been a demand of the opposition, ever, because it has always been the feeling of the opposition that government members, when they walked into this committee, left their party labels outside the door.

That has been the general feeling of this Ombudsman's committee that I have known over the past 15 years, so it's never been an issue in the standing orders. I negotiated the standing orders for my party on two or three different occasions, and the independence of this Ombudsman committee, the idea that it was ever being run by the government, was never an issue, has been an issue in terms of the last seven years that I've been involved. I find a great deal of difficulty with your concern over the independence of this committee in terms of this committee saying, "We're going to back the minister up with regard to this individual" if a case is brought here. I just don't think the history bears that assumption or conclusion out.

I'm very much concerned about the Office of the Ombudsman. I'm very concerned about your response to Mr Mammoliti's question. I believe he has the right to ask that question and I believe you have an obligation to answer that question. I don't think you have the right to ask him what his motives are. I think you're deflecting the issue and you're creating more suspicion as to whether or not you're covering up some problem that exists. Why don't you come in front of this committee and be forthright?

We are interested in protecting the Office of the Ombudsman so that you or the next Ombudsman or ombudsmen always will have the best possible office and will be acting in the interests of the people of Ontario. I'm quite concerned about your reluctance to be accountable to this committee. If you refuse to give that accountability, then I am quite willing to support this government in changing the Ombudsman Act in law to make you accountable to this committee. We may have to negotiate how the makeup of this committee might be, but the time has got to come when the people out there can be assured that there is an Ombudsman office which is in fact accountable to somebody. You have to be accountable to somebody, and the accountability is being denied to this committee.

I take it from your answer that you do not believe you have the responsibility to come and talk to this committee about the management of your office. Is that correct?

**Ms Jamieson:** Yes.



**Mr Sterling:** Thank you.

**Ms Jamieson:** If I could respond, Chair?

**The Chair:** I didn't realize there was a question, but by all means, go ahead.

**Ms Jamieson:** I think quite a number of issues were raised in what Mr Sterling said. I am very troubled by the fact that you think I am unwilling to be forthright. I am very forthright. What I am concerned about—

**Mr Sterling:** Well, answer Mr Mammoliti's question.

**Ms Jamieson:** I'd be happy to provide those figures.

**Mr Sterling:** Okay, then answer it. Don't attack his motives, answer his question.

**Ms Jamieson:** I'd be happy, Mr Chair, to provide those figures this afternoon.

**Mr Sterling:** Okay. That's fine.

**Ms Jamieson:** But what I am concerned about is the fact that the committee feels that the Ombudsman—or at least some members, not the committee as a whole, because I don't get that feeling—is accountable to it for day-to-day operations, for management and so on, when it's very clear in the Ombudsman Act—and I didn't create it; the Legislature did—that I, as the Ombudsman, am given the independence to lease office space, to have a staff etc. I live up to the highest standards possible in doing that, and I'm very concerned that the member does not feel I am forthright.

What I am also concerned about is that we don't add to the public's view, which has been expressed to me on many occasions and, I'm sure, to this committee in writing, that somehow the Ombudsman is being subject to a committee which does have a makeup of government members as a majority and leaves the Ombudsman open to being controlled by the very government she is pledged to investigate complaints about. I don't happen to want to give any more fuel to that thought. I'm very concerned about that.

I also want to speak to the point the member raised about the Board of Internal Economy. You're right: Even on that the government has a majority. Nothing's perfect, but I'll tell you, with the Speaker as the chair, you do have the ultimate independent officer of the Legislature there. You do have the balancing between independence and accountability evident.

1130

**Mr Ramsay:** That's not a public process.

**Ms Jamieson:** That may be something you'll want to check with them about, but it is a process that brings that balance. There may be better ones, there may be other ones, and the committee may wish to turn its attention to that. But I would only ask that as you consider how you want to change or if you want to change the relationship between the Ombudsman and the Legislature and this committee, that you have those things in mind, because, I'll tell you, that is the one area the public is most worried about: "Are you independent? How do we know you're independent?" Those are the questions I have to answer every day.

**Mr Sterling:** Can I ask a supplementary question here?

**The Chair:** By all means, Mr Sterling.

**Mr Sterling:** I don't think any member of this committee or any member of the Legislature wants to interfere with your independence with regard to making the decisions on a day-to-day basis, whether you're going to press the government to a response or whatever. I'm not interested in that.

I am, however, interested in whether your office is properly responding to the citizens of Ontario and managing effectively your office and the tax dollars you are spending on their behalf. I'm interested in all those kinds of things.

If this committee came up with a recommendation that the committee would have an even number of members from each recognized political party in the Legislature, and if the Chairman was not a government member, would you then agree to be responsible or accountable to this committee?

**Ms Jamieson:** I'd like to respond to that. However, before I do, Mr Sterling, you may not be interested in how cases are dealt with, and I respect that—

**Mr Sterling:** I'm interested in it, but I'm not interested—

**Ms Jamieson:** I mean interested in this committee interfering with cases. I'm sorry. I can tell you that when the committee tabled its report last spring, it attempted to instruct the Ombudsman on a number of cases: 10 out of 22 recommendations.

**Mr Ramsay:** Not on the decision.

**The Chair:** As a point of clarification, Ms Jamieson, we asked you to provide information for 10 cases. We do not interfere with cases on this committee. Go ahead, Mr Sterling.

**Ms Jamieson:** No, I believe if you look at them, one requested reopening in particular. Have a look again.

**Mr Paul Murray:** No. Just clarifying that point—

**The Chair:** Legal research, please.

**Mr Murray:** Of the 10 recommendations, 9 of the recommendations requested information, either clarification of the conclusions in the reports to the individuals that the individuals weren't clear on, or on the matter in which the case was handled by the Office of the Ombudsman.

In one of the 10 cases, in light of the fact that in reviewing the case it came to light that a mistake had been made in terms of the Office of the Ombudsman's statement of the authority to reinvestigate an individual's complaint, the committee recommended that the Office of the Ombudsman reconsider its decision not to reinvestigate. The committee did not recommend that it be reopened; the committee recommended that the Ombudsman reconsider its decision not to reinvestigate. That was one of the 10 cases.

**Ms Jamieson:** If you look very closely, even in what you have said I believe you will see that the line was crossed. That's why I wanted so desperately to talk to the committee about that report and about those recommendations before they went any further. That's why I wrote my letter that said we need to deal with this subject so that I can do my job and you can do yours.

Back to Mr Sterling's question: If this committee were structured equally by members of all parties, that would certainly go a long way towards allaying the fear or concern of the public that somehow it's out of balance or that the potential would be there for interference. I think that would go some way, and certainly I'd be happy to give that further consideration and have further discussion, if that's something you'd like to seek my input on.

I know it's the prerogative of the Legislature to compose standing orders and to draft legislation. You may want to consider a change to both in this instance.

**Mr Mammoliti:** I'll tell you ahead of time that I have three very brief questions, Mr Chair, and hopefully we can get them answered.

I'll go right back to where I left off. Thank you very much; you've committed to reporting back in terms of how much it cost for the 30 staff turnovers in the three years. Can I also ask you to include with that information how many of those 30 were let go and how long all of those employees worked for the Ombudsman before they were let go—how many years, how many months before they were let go—and how many are in the courts at this time, how many are suing the Ombudsman for letting them go?

If you can include those four items for me this afternoon, I really would appreciate it.

**Ms Jamieson:** I hope to have it this afternoon. I don't see why we can't. Let me tell you this: I'm happy to provide it because I'm happy to put some facts on the table.

**Mr Mammoliti:** Good.

**Ms Jamieson:** I'm concerned that there is some feeling that things are not right, so I do so out of my own discretion; I provide that information.

**Mr Mammoliti:** Yes, I do appreciate it.

**Ms Jamieson:** I think facts should be on the table. If you want to know about lawsuits on the question of employment, there is one. There have only been three lawsuits in which the office has been involved since I've been there. One I inherited and two in the last three years. One is before the courts on the question of employment matters. I'm happy to put facts on the table because I think if you see and the public sees the facts, you will see that there are no facts that lead to some of the comments that have been made and that trouble me.

**Mr Mammoliti:** That's great. It'll answer a lot of questions as well. That's certainly what I want to do, is answer a lot of questions. I think by providing this information you will answer a number of questions, most of them being mine.

Two more questions, Mr Chair.

**The Chair:** By all means.

**Mr Mammoliti:** Your office instructed, if I'm not mistaken, a consultant firm to conduct a test. It was called the Fever Test, if I'm not mistaken. This Fever Test was supposed to indicate the morale problem, where the morale problem lies, how to resolve the morale problem in the Ombudsman's office and to give you recommendations in terms of how you could do that.

The first question I have in terms of the fever test is, who was the consultant you hired? The second question is, did you implement any of the recommendations the consultant made through this Fever Test in your office?

1140

**Ms Jamieson:** Thank you for the question. First of all, any manager, any CEO worth his or her salt in the 1990s does employee attitude surveys. Absolutely, I've done one, and I'll be doing another one again—

**Mr Mammoliti:** I think that's good, by the way.

**Ms Jamieson:** —and hopefully on an ongoing basis. I don't know if you've been involved in one but they are terrific barometers. Yes, I did engage a consultant to assist you with it. Their name is Andros. I'm very happy to tell you that through the whole thing I had a joint employee-management committee called the navigation team running it—terrific participation—and have presented a report for implementation of recommendations. And yes, some of them have already been implemented, I'm happy to say, and there's more to come.

**Mr Mammoliti:** Do you wish to share what you've implemented with us?

**Ms Jamieson:** Maybe through the annual report I'll be commenting on some of the changes, as I normally do, to the office.

**Mr Mammoliti:** I would like you to be a little more specific in terms of what you've implemented from the recommendations in that Fever Test itself. What specifically did you agree with in terms of the recommendation?

**Ms Jamieson:** I can tell you that some of them have already gone forward; some are still being considered. Let me give you some examples of some of the things that have happened. I can tell you that there has been a change in delegation. I can tell you that there are a number of meetings that have been held, increased numbers of meetings, sharing of information. I can tell you that there have been some more operational changes that have been done to improve the office. There are quite a number. I am right now, as we speak, rationalizing the further recommendations with work plan, with the remaining budget in this fiscal year, so that I can see what we can do, what is possible.

**Mr Mammoliti:** Would it be too much to ask you for a copy of the recommendations from the Fever Test?

**Ms Jamieson:** Mr Mammoliti, that's an internal document; it is a bit much to ask for. I'll see, though, what information from it I can share.

**Mr Mammoliti:** Okay. I'd like to go on record as asking you for it, if possible, Mr Chair. If the Ombudsman chooses not to, that's fine with me, but I certainly want a copy of it. I agree with you that it's a good thing to do, but it's usually a better thing to implement the recommendations that come out of these good things that happen.

**Ms Jamieson:** I've been told that when you do these things—and I made a decision when I did it—that you don't do them if you're not prepared to implement recommendations; otherwise, you're raising expectations falsely. So yes, those will be implemented, but I think here, Mr Mammoliti, is where we do need to have some discussion.



Telling you about it, yes; sharing some information, yes; providing the actual internal document, I think not. This is where I think we're over the line.

**Mr Mammoliti:** I don't know; I would think it would be a public document.

**Ms Jamieson:** You would? If you had a document like that in your office you would share it publicly?

**Mr Mammoliti:** Who paid for it?

**Ms Jamieson:** Well, of course, the taxpayers, but that doesn't mean every document in my office would be shared. All my investigative files? Heavens, you don't mean to suggest that.

**Mr Mammoliti:** I suggested it. You didn't just suggest it; I suggested that. Nevertheless, you have your opinion.

You talked about the employee assistance committee that was established. It was established with the previous Ombudsman, if I'm not mistaken. They had a number of tasks, a number of areas they were dealing with, and I know you made a number of changes when you got in there in terms of their role.

You also claimed that the navigation team that consisted of the assistance committee worked with the consultant to do the Fever Test. It also had responsibilities under your new grievance procedure within the office. You claim that everybody is happy and everything is hunky-dory in the office, yet you chose to neglect to mention the fact that this assistance committee had resigned recently because they're very unhappy. If they're very unhappy, I'd like you to tell us why. If they all resigned, I'd like to know that as well and the reasoning behind the resignations—resigning not their positions with the Ombudsman, but resigning their role as part of the committee.

**Ms Jamieson:** Well, Mr Mammoliti, you're wrong. There is no factual basis for what you have said.

**Mr Mammoliti:** They didn't resign?

**Ms Jamieson:** They have just gone through new elections, so there has been a turnover, but not on the basis of resignation. There's been an election. There was participation throughout the office, and we've got a new slate for the employee relations committee.

**Mr Mammoliti:** So none of the previous—

**Ms Jamieson:** Not that I'm aware of.

**Mr Mammoliti:** They didn't resign. Okay.

**Ms Jamieson:** That's why I'm very anxious—although I do again think this is delving into the internal operations of my office—but in the interest of putting some facts on the table and dispelling some of the myths out there, I'm prepared to put them forward.

You're also wrong about who participated in the navigation team. They were representatives of the employees at large as well as management. The name of the committee I have is the employee relations committee.

**Mr Mammoliti:** At this time, thanks, Mr Chair.

**The Chair:** Mr Miclash, I understand that you have a question.

**Mr Frank Miclash (Kenora):** Yes. What I want to get back to is the actual working together of the Office of the Ombudsman and this committee. I think we've come to the conclusion that some changes are going to have to be made. I'm of the feeling that the Ombudsman, as an officer of the Legislature, is ultimately responsible to us, as legislators, and that we would have to in effect work together in terms of possibly doing the estimates through this committee. You mentioned earlier that you're responsible to the Board of Internal Economy, but the board is actually internal; it's not really a committee that is responsible, as we are, in terms of a committee. So I have to agree with a lot of what's happened here today in terms of the actual possible changing of the act and the clarification of that responsibility to the committee. I would like to have you maybe summarize and comment on how you feel about that.

**Ms Jamieson:** Thank you, Mr Miclash, for the question. My concern is only that the Ombudsman maintain the independence she needs to do her job, to deal with public complaints in such a way that the public will accept that she's at arm's length from political influence. I ask the committee, in all of its considerations, to keep that foremost in mind, whether you're talking about changing standing orders, the act or whatever, because it is critical to the public that they be able to go to someone they believe and accept is independent from the influence of politics, who will look with a critical eye at the actions of government. If people won't accept that, you don't have a credible Ombudsman, and that's really what you need.

I know the subject of estimates has been debated before, whether to give or not to give to this committee, and the decision taken so far is not. I think there are good reasons for that, and we talked about the purse-strings earlier. All of the officers of the Legislature right now go to the Board of Internal Economy for their estimates. That's the way the Legislature has chosen to deal with the officers, and I think in a way that balances accountability and independence.

**The Chair:** I understand you have a question, Mr Murdoch.

**Mr Murdoch:** No, just a statement to wrap up. I'd like to thank you for coming. I think we have to keep this dialogue open. That's what we're going to have to wrestle with in the rest of our review and when we come up with the final report: whether we clarify the act, where maybe you are responsible to this committee for certain things that at this point you may not feel you are. We'll have to clarify that. Maybe we'll leave it alone; maybe we won't. That's what the committee will have to decide. We think now that we are, and obviously we have some disagreement.

Maybe some of the questions Mr Mammoliti has asked could be done in camera when they have to do with certain people, but we have to figure out a way to do that. I think this is a start, and we have to meet with you again and go on and work that out, but I can see that there certainly is a real difference between the way you interpret the act and the way most of the legislators interpret it, so that's something we're going to have to work on as a committee. With that, I'll just wrap up, and thank you for coming.

1150

**Ms Jamieson:** Thank you, Mr Murdoch. I should clarify the fact that it has been a constant source of tension between the Ombudsman of the day and committees, over time, this balancing. This is not something that has happened in the last year or the last six months or the last three years. If you look back at the time of Mr Maloney, Mr Justice Morand—I think you heard from Mr Justice Morand. You heard about the tension, you heard about the differences, so this is a long-standing issue.

For my part, the trick is to find accommodation, and I think it can be found. It was found in the time of Maloney. It was found in the time of Morand, and I think it can be found again. I am very interested in working on that with this committee. That's why I said at the outset, with goodwill all around, I think we can find that accommodation. You and I know how long it would take, even should you decide legislative change were required, but I've got to provide service to the public today and tomorrow and the next day, and so do you. So it seems to me we've got to get on with finding a way to do the balancing and find the accommodation and work together.

**The Chair:** Thank you very much, Mr Murdoch. I understand you have a question, Mr Mammoliti.

**Mr Mammoliti:** Just in terms of accountability. I respect the fact that you look at the standing orders and the act in the way you do; not that I agree with your interpretation, but I respect that fact, and I want to let you know that.

If you don't choose to work with us in the capacity that we're asking you to on this committee, would you be prepared to work with the estimates committee in that capacity? Are you accountable at this particular time to the estimates committee?

**Ms Jamieson:** I think I've answered the fiscal part of my accountability, Mr Mammoliti. I am already accountable to the Board of Internal Economy for my estimates, to the auditor for my audit. I put my annual report before this committee. I'm accountable every time I sign my name to a report, and so I think I am already accountable.

**Mr Mammoliti:** You say you're accountable, but who are you accountable to?

**Ms Jamieson:** I've just listed—

**Mr Mammoliti:** We're all accountable to at least somebody or some people. Who are you accountable to? Yes, in terms of estimates, in terms of your fiscal responsibilities, you're accountable to estimates and to other committees perhaps.

I guess what I'm asking is that we've asked you for a number of areas in which we would like to work with you. You've chosen to say that in some of those areas, it's basically none of our business. That's what I read into it. Would you be willing to work with other committees in those areas? If not, just say you're not.

**Ms Jamieson:** I work with a number of other committees of the Legislature already who are considering legislation or who are reviewing issues that I might have a case

about. I do work with them on that basis. Am I willing to answer to any other committees? Is that what the question is?

**Mr Mammoliti:** Pretty much, yes.

**Ms Jamieson:** My only concern is the same thing I mentioned to Mr Michash, that in this job, if you're going to review complaints about the government, you've got to be beyond the reach of political interference. I didn't dream that up. That was done when the act was passed.

**Mr Mammoliti:** But nobody's looking to interfere here. Nobody's saying we want to interfere with your decision-making. But at the same time we have a responsibility, and if it doesn't say it in the standing orders, there are precedents in the past for it. Other ombudsmen, in terms of their opinions, have given some leeway towards this committee. You've chosen not to.

I've got to disagree in terms of the requests that were made by the subcommittee with those letters. I sat on that subcommittee, and at no time did we want to interfere with your decision-making at all. I think what you've basically told us here today, if I'm not mistaken, is that we're pretty much at your disposal and that we have to work for you, as opposed to us asking you to work with us at times, and to deal with particular problems that might arise. That's where I have a problem.

**Ms Jamieson:** Then you haven't heard what I've been saying, Mr Mammoliti, because what I have been saying from the beginning of this morning, and what I hope is the note this meeting will conclude on, is that there are some tough issues to work out, no question about it, but there is also certainly a willingness—in fact an eagerness—on my part to find that accommodation. That's why I was wanting this meeting, and I have heard from a number of members today that they are just as eager to find that accommodation.

I think that's where we should focus our efforts. I think we've gone a long way towards that this morning, and I'd like to continue to move forward on that path, because it's on that path that we will do the best for the public that we both serve. That's what we need to spend our time on, and I'm hopeful of a future meeting where we can do some more of that.

**The Chair:** Thank you very much, Mr Mammoliti. Seeing no further questions and comments, and seeing that it's close to 12. I want to thank you, Ms Jamieson, for appearing before us this morning and taking time out of what we know is your busy schedule. Hopefully, we've cleared some things up. I would also request that if we need you to appear before us again you would be more than willing to do so. This committee stands adjourned until the call of the Chair.

**Ms Jamieson:** Mr Chair, I'd like to volunteer a couple of dates at this stage for a future meeting if you'd like to do that now, or would you like to get in touch informally?

**The Chair:** The committee will be in touch with you.

**Ms Jamieson:** Fine. Thank you.

**The Chair:** We stand adjourned.

The committee adjourned at 1158.



## ERRATUM

Table of Contents for issue B-5 should read:

## CONTENTS

Tuesday 25 August 1992

<b>Review of Office of the Ombudsman</b> . . . . .	B-63
John P. Bell . . . . .	B-63

## STANDING COMMITTEE ON THE OMBUDSMAN

- \***Chair / Président:** Morrow, Mark (Wentworth East/-Est ND)
- \***Vice-Chair / Vice-Présidente:** Haeck, Christel (St Catharines-Brock ND)
- Akande, Zanana L. (St Andrew-St Patrick ND)
- Drainville, Dennis (Victoria-Haliburton ND)
- Duignan, Noel (Halton North/-Nord ND)
- Henderson, D. James (Etobicoke-Humber L)
- Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
- Miclash, Frank (Kenora L)
- \*Murdoch, Bill (Grey PC)
- \*Perruzza, Anthony (Downsview ND)
- \*Ramsay, David (Timiskaming L)
- Witmer, Elizabeth (Waterloo North/-Nord PC)

**Substitutions / Membres remplaçants:**

- \*Christopherson, David (Hamilton Centre ND) for Ms Akande
- \*Curling, Alvin (Scarborough North/-Nord L) for Mr Miclash
- \*Hansen, Ron (Lincoln ND) for Mr Duignan
- \*Mammoliti, George (Yorkview ND) for Mr Drainville
- \*McLean, Allan K. (Simcoe East/-Est PC) for Mrs Witmer
- \*Owens, Stephen (Scarborough Centre ND) for Ms Haeck
- \*Winninger, David (London South/-Sud ND) for Mr Johnson

\*In attendance / présents

**Clerk / Greffier:** Carrozza, Franco

**Staff / Personnel:** Murray, Paul, committee counsel and research officer, Legislative Research Service





## CONTENTS

Wednesday 7 October 1992

<b>Ombudsman of Ontario</b> . . . . .	B-117
Roberta Jamieson . . . . .	B-117
Erratum . . . . .	B-132

### STANDING COMMITTEE ON THE OMBUDSMAN

- \***Chair / Président:** Morrow, Mark (Wentworth East/-Est ND)
- \***Vice-Chair / Vice-Présidente:** Haeck, Christel (St Catharines-Brock ND)
- \*Akande, Zanana L. (St Andrew-St Patrick ND)
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- \*Miclash, Frank (Kenora L)
- \*Murdoch, Bill (Grey PC)
- Perruzza, Anthony (Downsview ND)
- \*Ramsay, David (Timiskaming L)
- Witmer, Elizabeth (Waterloo North/-Nord PC)

#### **Substitutions / Membres remplaçants:**

- \*Abel, Donald (Wentworth North/-Nord ND) for Mr Duignan
- \*Cooper, Mike (Kitchener-Wilmot ND) for Ms Haeck
- \*Harrington, Margaret H. (Niagara Falls ND) for Mr Drainville
- \*Mammoliti, George (Yorkview ND) for Mr Johnson
- \*Sterling, Norman W. (Carleton PC) for Mrs Witmer

\*In attendance / présents

**Clerk / Greffier:** Carrozza, Franco

**Staff / Personnel:** Murray, Paul, committee counsel and research officer, Legislative Research Service

B-9



B-9

ISSN 1180-4300

## Legislative Assembly of Ontario

Second session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 21 October 1992

### Standing committee on the Ombudsman

Review of Office  
of the Ombudsman

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Mercredi 21 octobre 1992

### Comité permanent de l'ombudsman

Examen du Bureau  
de l'ombudsman

Chair: Mark Morrow  
Clerk: Franco Carrozza

Président : Mark Morrow  
Greffier : Franco Carrozza





### **Table of Contents**

Table of Contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

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La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 21 October 1992

The committee met at 1017 in room 151.

### REVIEW OF OFFICE OF THE OMBUDSMAN

**The Chair (Mr Mark Morrow):** I'd like to call this meeting to order. I'm Mark Morrow, chairman of the standing committee on the Ombudsman. We're here this morning to continue our review of the Office of the Ombudsman.

DONALD C. ROWAT

**The Chair:** I would like to welcome Professor Donald Rowat, department of political science, Carleton University. Good morning and welcome, professor. You have ample time this morning to make your presentation. I would please ask that you leave some time at the end of your presentation so that members can ask questions and/or comments. I'm sure everybody has some comments that they would like to make. Feel comfortable and begin when you're ready. Although I have stated your name, would you please state your name for the record.

**Dr Donald C. Rowat:** I'm Donald Rowat from Carleton University. I want to start off by saying I consider it a great honour to be invited to appear before this august committee, which has been in operation now for something like 17 years.

I should start by saying that professors are programmed to speak for exactly 50 minutes, but I've been told by Franco Carrozza that I am to have approximately 20 minutes, but that may be extended because you have a little more time this morning. Anyway, I'll try to adhere to the famous old proverb by Confucius that he who speaketh by the yard and thinketh by the inch deserves to be kicketh by the foot. I'll try to keep my remarks brief so there will be time for discussion.

I'm going to speak mainly to the three tables that I've distributed that were on the top of your package, tables 1, 2 and 3. I see my logical role in making a presentation to this committee as giving you a kind of comparative overview, because I've done a comparative study of the ombudsman in a book called *The Ombudsman Plan*. My comments are going to be based mainly on these three tables, and then I'll end up with some comments on the relation of legislative committees to ombudsmen in the hope of promoting smoother relations between your committee and the Ombudsman's office.

The first table is the first one that I think has ever been compiled to show the total number of legislative plans in the world and their nature. I would call your attention to its source at the bottom of the page on table 1. It comes from the International Ombudsman Institute, which is based in Edmonton. It used to produce a very valuable survey of the legislative ombudsman plans, and the survey has since been abandoned so there are no more recent figures than

these, unfortunately. I'm glad I took advantage of it, at that time, when I prepared this table, to make use of its survey.

If you look at the table, you'll note that most of the legislative ombudsman systems are in the developed countries. Many are regional and local—regional, which of course includes states and provinces. Note especially the regional ones which are relevant to you, in Australia, Canada and the United States. They exist mainly in the federations, but more recently, Italy and Spain have had ombudsman institutions placed in force, and those under heading "C" approved but not yet in force.

That was at the time that this table was compiled. Since then a number of the regions in Italy have appointed ombudsmen, and also they've been spreading in Spain. They started in Spain in the most autonomous regions, and then the central government has since adopted an ombudsman plan in Spain. So it exists in quite a number, I would say a majority, of the developed democracies at the national level in Western Europe.

Another thing to note in the table is the lack of regional and local plans in the developing countries, except for India. I had the opportunity to go to India to study the state ombudsman plans there. Of course the thing that can't help but impress you is that it exists in some of the most populous states in India. They easily have the largest ombudsman constituencies in the world, because the population of those states is numbered in the millions and millions. It's not surprising that they do not operate with as much success as in the western democracies.

I think the obvious reason they don't exist to such an extent in the developed countries is that they are much more highly centralized. I did a study of the civil servants in the developed and developing countries and discovered that a very high proportion of the public servants in the developed democracies worked for regional or state or local governments. But this is not true in the developing countries, which are much more highly centralized and do not have federations or autonomous local governments.

The thing to draw your attention to is the totals at the bottom of the page. You'll notice there were 90 legislative ombudsman plans in 1983, of which 25 were national, 44 were regional and 21 were local. So it's interesting that a majority of the plans are state or local. By now, there may be 100 legislative plans in the world, because they keep being adopted in one country after another.

Before concluding my comments on that table, I want to draw your attention to a minor error that I discovered last night in looking over the table, and that is that Switzerland is stated here as having a plan at the national level, whereas that actually should be under "local." The city of Zurich and the canton of Zurich each have a plan, but not at the national level. That number got misplaced. The totals are correct; it's just a printing error. So much for



table 1. You may have questions about that which you'd like to ask later.

Now let's move on to table 2. Here I compare the complaints per 100,000 to give you some idea of the comparative success of the ombudsman plans in the various developed democracies. I've only included the developed democracies because it's very difficult to get information on the total number of complaints. The source of this table is not indicated, nor the year, because that was in the text from which the table was taken. The year is 1980 for most of the figures given, and the source is the same, this survey of the International Ombudsman Institute.

I had forgotten that I sent Franco a copy of a chapter in an American book where I'd written about the ombudsman. These tables are contained in that paper, and, because they're so rare, they are also repeated in a more recent paper that has just been distributed to you that I just finished in October.

So this table, then, shows you complaints only. I tried to leave out—most of the ombudsmen's annual reports give you the total number of inquiries and complaints, and then they'll give you a separate figure for complaints. But the trouble is that the definitions vary; the definitions are not the same. For example, the Ombudsman for Ontario only counts written complaints, and yet a number of complaints are received by telephone. They're not inquiries; they're actual complaints. The ombudsmen have different ways of counting these, so that may explain the somewhat lower figure for Ontario, because the others may have counted complaints received by telephone as well.

The interesting things to note about this table are that the figures, despite these variations in definitions, are remarkably similar. You'll note that the high ones are Israel and Hawaii, which have a very high proportion of complaints per 100,000 population, and the low ones are Iowa and France.

There's a special reason why France is so low. You see that it has only seven per 100,000 population. The reason is that complaints must go to a member of the Legislature before going to the ombudsman, as in the United Kingdom, and that has had an almost disastrous effect on the plans in those two countries. Because the complaints cannot go directly to the ombudsman, they handle a far fewer number, although the ombudsman in France began a device where an urgent complaint would come in directly to him and then he would get the agreement of a member of the Legislature to receive that complaint formally. So he managed to circumvent the restriction in that way.

I think a comparison with developing countries would probably show them at a very low level of complaints per 100,000 population. I discovered this in India, for instance, where they have these millions and millions of population, but many of the members of the population have never even heard of the Ombudsman, so it's not surprising that they have a low number of complaints per 100,000.

These tables are discussed further in the papers that Franco Carrozza has distributed to you, and you'll get to more commentary on them in those papers.

The one that was just distributed to you, that I completed most recently, is going to be published in French in

the *Revue française d'administration publique*. What he's distributed is the English version of that paper. I've left a copy of the paper with Franco, and he's now having it photocopied and it will be distributed to you. The tables are blown up on the photocopy machine so that you can read them more easily in the versions that have been distributed to you.

Table 3 is a new one that I've just compiled for the benefit of your committee. I began realizing that you could make a very simple comparison of complaints per staff member, because all of the ombudsmen's reports give you a figure on the total number of complaints and also a figure of their total staff, so you can get a very elementary and very rough comparison of the number of complaints handled per staff member, which is a rough measure of efficiency. So it's relatively easy to do.

I simply took the annual reports I had that were conveniently available, and that's why they're for different years, because some of them are slower than others at sending out their reports. I think it gives you a useful comparison, even though you have to keep in mind that the definitions differ somewhat from one plan to another. I think counting only complaints is less reliable because of the differences in definition, whereas if you take the total figure of complaints and inquiries—most ombudsmen wish to demonstrate that their office is useful, and therefore they're very good at counting all the complaints and inquiries and giving you a total figure. I think it's more useful to compare those, although I've given you figures for both.

### 1030

The first heading is "Complaints and Inquiries" and the second one is "Complaints Only." If you look down the column for 1990, which is the easiest one to compare, you'll note that Ontario's figure is the lowest, so each staff member handles fewer complaints and inquiries or fewer complaints than the other countries it is compared with. I compared it mainly with Quebec and British Columbia, as representative Canadian provinces, and New Zealand and New South Wales in Australia, because I had travelled to Australia and had collected information recently on those countries. That's the basis for picking the countries.

I've said elsewhere in papers I've given that one of the remarkable things about this kind of comparison is that the federal Ombudsman in Australia handles twice as many complaints with half the staff. That's a bit of an exaggeration, I discovered. I think I must have been using old figures for Ontario. Even so, you'll find that it's not far off the mark if you take complaints only. I couldn't get a figure for complaints of all kinds for Ontario for 1989-90. I didn't have the most recent report for 1991-92, so the figure of 67 for 1991 seems to be the one to focus on.

If you look down that column, then, you'll find that Ontario has fewer than Quebec, British Columbia and especially Australia on all counts. If you look at New South Wales and New Zealand, however, for 1989-90, which is the year I have figures for, you'll find that they don't come off very well, and they're down there with Ontario. Of course, this has to be taken as a very rough



measure of efficiency because of the differences in definition that I've pointed out.

When I was in Australia, of course I was mystified about how the federal Ombudsman in Australia managed to handle so many complaints and inquiries with such a small staff. The answer that I seemed to come up with was his use of the telephone. Most ombudsmen will allow complaints to come in by telephone, but the difference in the federal scheme in Australia is that the Ombudsman uses the telephone to settle complaints. In other words, instead of a high degree of documentation in written complaints, he uses the telephone to settle complaints. Instead of sending people over to a department to get the documentation or having it sent to him, he uses the telephone wherever possible. He was forced into that because of a very skinny budget. He has said on a number of occasions that he had a starvation budget and had to invent efficient ways of handling these complaints.

Just to confirm my impression, I wrote to the former Ombudsman, Dennis Pearce, and this is the letter that's attached as the final two pages in this documentation.

Mr Pearce was kind enough to write back and confirm that he thought I was right, that the use of the telephone was probably the main secret of his success, but he has always argued that he's been underbudgeted. He ends his letter by saying, "Please don't take the federal scheme in Australia as a model, because we had been understaffed and underbudgeted for years." I'll leave you to read his letter without taking any more time with it.

I guess my conclusion about this table is that it would be very interesting to compare all the provinces in Canada with Ontario, or Ontario since 1975. It would be quite possible to pull out these figures over a period of time, which I didn't have time to do. A researcher might be able to do this for you.

Now I come to the hard part of my presentation, and that is the committee-Ombudsman relations. I guess the first comment I would make is that the correct balance between supervision of the Ombudsman's office and interference is a very hard balance to strike.

Your committee, I think, is very unusual among Ombudsman plans in the world simply by its existence. There are very few Ombudsman plans that have a legislative committee that supervises the Office of the Ombudsman. It's my impression, and the impression of all the scholars who have written about it, that it's a very valuable committee and has done some tremendously good work.

As a former Chairman of this committee, Mr Runciman, has pointed out in an article he did in Parliamentary Affairs, a link between the Legislature and the Ombudsman through a committee of this kind is very badly needed, because you can't expect the Legislature as a whole to supervise an office of this kind; it has to be done through a committee.

I would say the unique feature of this committee, even among the countries that do have legislative committees, is its review of recommendation-denied cases. This, I think, is unique and extremely valuable work that the committee has done, and the reason is that the dominance of the cabinet in the parliamentary system means that the government

and its agencies can easily refuse the Ombudsman's decisions. You have to keep in mind that they're only recommendations and that the Ombudsman has no power to enforce the decisions, but the committee can give them political backing and this is what this committee has been doing. This is badly needed in the British parliamentary system because of the dominance of the cabinet over the Legislature when it has a majority.

This was revealed very clearly in my study of the Ombudsman in India, because there you found that the ignoring of the Ombudsman and his activities by the Legislature was so great, particularly at the insistence of the government, that even the annual reports of the Ombudsman were not tabled in the Legislature for several years after he had issued his report. Of course, the government's interest was that it didn't want criticisms and comments until long after the events had taken place. This was an easy way for them not to be subjected to the public criticisms of the Ombudsman.

I think the remarkable thing about the work of this committee is the way in which the departments and agencies cave in before they're to appear before this committee. You find that most of the cases of this kind are settled even before the department or agency appears before the committee, simply because they don't want to go through the ignominy, I guess you could say, of having to justify or oppose the Ombudsman's recommendation publicly.

The other unusual feature of the committee is the regulations that the committee has formulated. I say it's unusual but not unique because it's not unprecedented. It exists in several other Ombudsman plans, especially the original ones in Scandinavia and Sweden and Finland, where a committee of the Legislature has formulated guidelines or regulations for the activities of the Ombudsman's office. Formulating guidelines for the approval of the Legislature by a committee seems to me a legitimate extension of the legislation to ensure accountability.

#### 1040

I think it's more difficult to strike a proper balance on budgetary control, especially during this present time of financial constraint. The government's budgetary role is to measure the value of every government service against every other, including the Office of the Ombudsman, so I believe that at least the Ombudsman's estimates should be considered along with the other legislative offices such as the auditor, the electoral commissioner and so on.

In conclusion, I would say that there will always be inevitable tension between the twin desirable objectives of independence of the Ombudsman's office and its accountability to the Legislature. It's not surprising that over the years there have been confrontations and a certain amount of tension between the committee and the Ombudsman's office. But keep in mind that the committee and the Ombudsman have coexisted successfully for 17 years and have done a tremendous amount of useful work, so I predict that the present difficulties will be overcome and an even more desirable balance will be struck between independence and accountability in the future.

I would conclude that we shouldn't be pessimistic about the present confrontation. We shouldn't be like Allan Lamport, the former mayor of Toronto. You remember he



was famous for his malapropisms. At one point Lamport said, "If this thing catches fire, it will snowball right across the country." So I hope it doesn't catch fire.

I've seen the Ombudsman's report to the Speaker in August but I haven't seen the committee's report of last May—I don't know if Franco perhaps forgot to send me one—so I don't feel qualified to go into further detail on the two sets of recommendations, but I'll be glad to answer your questions to the best of my ability.

**The Chair:** Thank you very much, Professor Rowat, for that fine presentation. Questions and/or comments.

**Mr Donald Abel (Wentworth North):** Thank you, Mr Rowat, for your presentation. A couple of things came to mind. I was going through some of the articles you had presented to us. I look forward to reading them; I think I'll get a lot out of them. First of all, there's *Why Democracies Need a Legislative Ombudsman*, and one that caught my eye was *Why an Ombudsman to Supervise the Courts?* I guess that brings us to the matter of accountability, for obvious reasons, and I'm sure I'll find out when I read the article why you feel the Ombudsman should supervise the courts. But who do you think the Ombudsman should be accountable to?

**Dr Rowat:** I would say probably the Legislature. As Mr Runciman has pointed out, it's extremely difficult to make any office accountable to the whole Legislature, and that's why I think a committee of this kind has to exist to represent the Legislature.

**Mr Abel:** So it's your opinion that the Ombudsman should certainly be, I guess as an officer of the Legislature, accountable to the Legislative Assembly, by way of a committee such as this.

**Dr Rowat:** Yes indeed. As I pointed out, it's a question of striking a balance between the desirable degree of independence and the desirable degree of supervision and accountability.

**Mr Abel:** There's one other thing; this is for my own curiosity. During your deputation you had said that Ontario registers only written complaints and deals with telephone complaints in a different manner. Could you explain how they deal with the telephone complaints, and are those complaints factored into the overall total?

**Dr Rowat:** Yes. I think what they do is transform a telephone complaint into a written complaint. In other words, if it seems like a legitimate one that they may wish to investigate, they will ask the complainant to submit it in written form or they may even help the complainant who finds difficulty in writing a complaint formulate it in a desirable written form.

I don't think there's double accounting, though. I was worried about that. I thought maybe they receive a complaint by phone and record that as a complaint and then when it's transformed into a written complaint, they count it as another one. I don't think they do that. They will eliminate the original count so it doesn't inflate the total.

**Mr Abel:** Thank you, Mr Rowat. Again, I look forward to reading your articles.

**Ms Margaret H. Harrington (Niagara Falls):** I found your comments very interesting. It's important for us to set our committee and our way of working in Ontario against the whole backdrop of how it's done in other places, so I think it's very useful.

One statement you made with regard to Ontario is that the review of the recommendation-denied by this committee then gives the Ombudsman political backing. You felt that was important and certainly a good thing. Would you say therefore that in Ontario the system works better than in most other places?

**Dr Rowat:** Yes, as far as implementing the difficult cases is concerned, it works better. I would stress again that this committee's work in that respect is unique, and for that reason it's difficult to compare this committee with other committees, even where they do exist. I think Graham White pointed that out in his article, that this committee is not like any other, so it doesn't do much good to compare it with the British committee or the one in Alberta or wherever they exist because they don't do this kind of work, which is, I think, a really interesting development of this committee.

**Ms Harrington:** I have another question. On your table 3 of the comparisons, you discussed why Australia by the use of the telephone was able to handle so much more, but I wanted to compare Ontario with BC. In many ways, Ontario and BC are comparable, I would imagine, in the type of citizens and the type of complaints and how the system operates. The comparison numbers are 67 in Ontario in 1990 and 207 in BC. Is there a reason for that difference that you can find?

**Dr Rowat:** I don't know what the reason is. I've just compiled this table; of course, when you do a statistical comparison of this kind, it often raises interesting questions that you would never think of before. That is one interesting one. I was puzzled by this too: Why does British Columbia manage to handle so many complaints with a much smaller staff?

**Ms Harrington:** You've given us a reason for Australia, so there must be some kind of reason for BC.

**Dr Rowat:** Yes. It would be interesting to find out, but I don't know the answer.

**Ms Harrington:** I think you'll have to take a trip out there.

**Dr Rowat:** Maybe.

**Mr David Ramsay (Timiskaming):** Good morning, professor. Thank you very much for your presentation. When you do these comparative statistics, to me, it would be interesting to do it on a dollar-per-complaint basis too, just to see overall efficiencies there. As you know, we have a fairly large budget for Ontario, about \$9.4 million, so it's a very big operation. It would be interesting, another way of comparing, I guess.

**Dr Rowat:** Yes, that would be interesting. All the Ombudsman reports give the total budget, so it would be quite possible to make this kind of comparison.

**Mr Ramsay:** Yes, very much so. Near the close of your remarks, you stated that you felt it would be appropriate for

the Legislature to consider the budget of the Office of the Ombudsman. I wonder if you have any specific recommendations for us in this regard: We are a Legislative Assembly that has an estimates committee to handle estimates of all government ministries, and in this particular case we have a specialized committee, this committee, to deal with issues of the Ombudsman. Do you think it would be appropriate that the Ombudsman, in order to focus on whom she report to, deal with budgetary estimates in this committee, or do you think it should be just like any other ministry or agency and go to the estimates committee? I was just wondering if you had any opinion on that.

1050

**Dr Rowat:** I have a very definite opinion on that. It seems to me that most of the provinces provide that the agencies of the Legislature are reviewed by a special committee. I think this review should be done apart from the general estimates of the government, because it's too much under the domination of the government to have the estimates considered as part of the ordinary estimates. On the other hand, I would not recommend having them considered solely by this committee, because it seems to me that you need to compare the expenditures of one office against another. At least one ought to compare the work of the Ombudsman against the other legislative offices, such as the auditor and the chief electoral officer and so on. In other words, the Legislature usually has its own review of the legislative budget, and I think that's the place where it ought to be considered.

**Mr Ramsay:** That's a very good point. You're correct, and I agree with you about a comparative type of study. For Ontario we have our Board of Internal Economy that basically approves expenditures of the Legislature and servants of the Legislature.

The problem with that is that it's dominated by members of the executive—three cabinet ministers sit on that—so many of us in the assembly feel that is the wrong place for her budget to be approved. But maybe that's the balance: As she is a servant of the Legislature, the final approval should go through the Board of Internal Economy, but maybe the standing committee on the Ombudsman would be the appropriate body to actually go through the estimates process and do the detailed discussion and flush out all the expenditures and have that discussion. Maybe this is the place, but in a way there is that balance, with the Board of Internal Economy that oversees all budgets of agencies—

**Dr Rowat:** Yes, but I wouldn't see any more reason for doing that than for the other officers of the Legislature or the other expenditures of the Legislature. There's no special case for having the Ombudsman's estimates considered separately from, say, the auditor or the chief electoral officer, or the other officers of the Legislature, for that matter.

**The Chair:** Further questions or comments?

**Mr George Mammoliti (Yorkview):** Very interesting stuff. I'm certainly going to read what you've given us and go back into Hansard as well, because I missed the first part of your submission.

I want to go back to Australia, in terms of the phone calls and the way they do things. I want to talk about public satisfaction, I guess, and the reason behind the review and why a lot of MPPs are concerned in terms of the number of complaints that are coming out of our system. Frankly, I think there is a problem of some sort, and whether we're having a problem with the amount of money we're spending with our system and with the system itself.

I guess my question is, during your stay in Australia, did you find that the public was satisfied with that type of system, or were there a number of complaints in terms of efficiency and correspondence and in terms of perhaps misconception over the phone and that sort of thing?

**Dr Rowat:** You're wondering whether the public is satisfied with the activities of the federal Ombudsman?

**Mr Mammoliti:** Right.

**Dr Rowat:** I didn't have a chance to get a very good impression of that, but I certainly didn't hear any great complaints. My general impression is that the public in Australia is quite satisfied with the activities of the Ombudsman. There doesn't seem to be any letdown in the efficiency with which the complaints are handled as a result of the greater use of the telephone.

One thing you have to keep in mind too is that the Ombudsman tends to serve the disaffected and the uneducated more than the rest of the population, and they're the ones who find it difficult to make a written complaint. They would far rather make use of the telephone. That's not true in the developing countries, of course, because in India they don't have telephones so they can't make complaints by telephone. But we're quite used to doing this, and most people would rather pick up a phone than write a letter.

**Mr Mammoliti:** So there's actually some advantage to using the phone and bringing that personal touch—

**Dr Rowat:** That's right.

**Mr Mammoliti:** As Bell Canada would say, that personal feeling, that personal touch to somebody. A lot of the complaints coming out are just that, that they're not able to see or speak to anybody, that it's strictly paperwork, that they don't feel attended to in a proper way. Would you agree that the telephone may be a cheaper and wiser way of doing business in terms of accommodating the public and making it feel comfortable?

**Dr Rowat:** Yes, it looks to me as if it would, but there's one important point I forgot to mention. I think Graham White makes this point in his writings. I think one of the reasons for the more elaborate procedures used by the office in Ontario is the very existence of this committee. In other words, the Ontario Ombudsman wants to make sure that everything is well documented, because these cases are likely to appear before this committee and the Ombudsman is going to have to justify them against the department's or agency's point of view. That may be one of the explanations of the somewhat higher cost you might find in the Office of the Ombudsman of Ontario. It's more difficult to shift to a less formal procedure, I think.



**Mr Mammoliti:** Can I have just one more question? You may want to answer, you may not. You've seen the experience of Australia, you've had a grasp of our system here. I realize that the individual in Australia who has written to us has said not to use them as an example because of their budget, but at the same time, if they haven't received that many complaints, obviously they're satisfied with that type of approach. Would it be a significant saving if we were to look at using the telephone as a means of—

**Dr Rowat:** I think so, but one point to keep in mind is that there is no easy way for one to get an impression of how efficient the office is in Australia. There's no comparable committee to this one, so nobody really is looking at how satisfied the public is with the Ombudsman's activities. It's extremely difficult to measure. I mean, how does one find out whether the public is satisfied with the Ombudsman's activities, other than running some kind of survey? Who would conduct it? It's difficult to get an impression.

**Mr Mammoliti:** Thank you, sir.

**Mr Bill Murdoch (Grey):** Thank you for coming, professor. We certainly appreciate your views. As you know, this committee decided to have a review of the Ombudsman and of the whole situation, and she has refused to sit here, as in our review, to talk to us or to answer questions, when it's specifically with the review. I just wondered what your thoughts may be on that, or your thoughts on the whole review. Do you think it's a good idea or not? We haven't had one for 17 years.

**Dr Rowat:** It's not unusual for a legislative committee to conduct periodic reviews, and I think it's becoming more frequent. For instance, the legislation on freedom of information: It's quite common here and in other jurisdictions for the legislation to provide for a five-year review or whatever. I think that's becoming more common, and it seems to me quite a legitimate activity for a legislative committee to conduct such a review periodically, because you can't do a thorough review every year. So it needs to be done, I think.

**Mr Murdoch:** That's really all I had.

**The Chair:** Thank you, Mr Murdoch. Mr Cooper, I understand you have a question.

**Mr Mike Cooper (Kitchener-Wilmot):** Mr Rowat, good morning. You have the tables here that give a lot of numbers, but one of the factors is how familiar the public is with the Ombudsman offices. That would obviously make a difference. From the systems you've studied, are most of them passive or are they very proactive, going out to the public, advertising that they're there? That would make a difference in the numbers. If it's a very proactive office, then the public would know it's there and obviously they'd get more calls. Do you have any comparison between the different offices?

**Dr Rowat:** I don't have a comparison, but I have an impression. I've often said that it seems to me that one of the chief problems of Ombudsman offices everywhere is that they are afraid of advertising too much for fear they'll be overwhelmed with complaints and be unable to handle them, and then they'll be accused of the same delay they're accusing the departments and agencies of. If they're not assured of a budget that can handle the increase in complaints, they are hesitant about being too proactive in advertising their services.

Many jurisdictions have done surveys of the public about how much knowledge it has of the Ombudsman. One was conducted recently by the Ombudsman's office here. It's quite common to find that only half the people in the jurisdiction have ever heard of the Ombudsman. There's clearly a need out there for people to be made much more aware of the availability and the services of the Ombudsman, everywhere. It's a real problem.

**Mr Cooper:** But from a lot of these tables, it would depend on how long the Ombudsman's office has been out there for public familiarity, things like that.

**Dr Rowat:** I think so, and how well it's known.

**The Chair:** Thank you, Mr Cooper. Seeing no further questions and/or comments, Professor Rowat, I would like to thank you for taking time out of what I know is your busy schedule to help us in this review.

This committee now stands adjourned until 10 am, October 28.

The committee adjourned at 1102.











## CONTENTS

Wednesday 21 October 1992

<b>Review of Office of the Ombudsman of Ontario</b> . . . . .	B-133
Donald C. Rowat . . . . .	B-133

### STANDING COMMITTEE ON THE OMBUDSMAN

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- \*Abel, Donald (Wentworth North/-Nord ND) for Mr Duignan
- \*Cooper, Mike (Kitchener-Wilmot ND) for Ms Haeck
- \*Harrington, Margaret H. (Niagara Falls ND) for Mr Drainville
- \*Mammoliti, George (Yorkview ND) for Mr Johnson

\*In attendance / présents

**Clerk / Greffier:** Carrozza, Franco

**Staff / Personnel:** McNaught, Andrew, research officer, Legislative Research Service

B-10



B-10

ISSN 1180-4300

## Legislative Assembly of Ontario

Second session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 28 October 1992

### Standing committee on the Ombudsman

Review of Office  
of the Ombudsman

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Mercredi 28 octobre 1992

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Examen du Bureau  
de l'ombudsman



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### **Table of Contents**

Table of Contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

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La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 28 October 1992

The committee met at 1013 in room 151.

### REVIEW OF OFFICE OF THE OMBUDSMAN

**The Chair (Mr Mark Morrow):** Can I call this meeting to order, please? Good morning. I'm Mark Morrow, chairperson of the standing committee on the Ombudsman. We're here this morning again doing a review of the Office of the Ombudsman, and this morning I'm pleased to have before us Robert W. Macaulay, QC, author of *Directions: Review of Ontario's Regulatory Agencies*. Good morning, sir. You have as much time as you need this morning. Please leave some time at the end for questions and/or comments by the members. Although I have stated your name, would you please officially state your name for the record?

ROBERT W. MACAULAY

**Mr Robert W. Macaulay:** Thank you, Mr Chairman, ladies and gentleman. My name is Robert Macaulay. I'm a practising barrister in the city of Toronto. I teach at the University of Toronto and I'm the author of a number of books on administrative law. I really don't have a statement to make. I was invited to come here to share with the members of the committee information that I might possess that might be of some use, and I had rather thought that I would prefer to just have a discussion with those who had questions in their minds.

I might just say to you, however—this will save some time today, I think—first, I have a two-volume book on administrative law that deals with the agencies, boards and commissions of the province of Ontario, and I have a chapter in it on the Ombudsman and on this committee. In the index of the book, there are a number of references to the word “independence.” Rather than going into that today and repeating my views on what “independence” means, I would propose that your secretary might consider going to any law library in the country and getting a copy of that two-volume book out and looking for the chapter on the Ombudsman and the committee, and also in the index under the heading of independence, and you would see my exploration of the meaning of the word “independence.”

The second point I would like to make to you, if I may, is that I took part in the original creation of the Ombudsman Act in 1975, or whenever it was enacted; I'm sorry, I've forgotten now the precise date. I wasn't the draftsman, but I was involved in the discussions as to the wisdom of the act and how it would be carried out in relation to the Legislature, so I've developed an interest in this committee and the legislation and I've followed it quite extensively in terms of the Hansard reports.

I've just written a new chapter on the Ombudsman, or an addition to the existing chapter, for my book, which will be out in a few weeks.

So I'm not unfamiliar with the subject, and I would comment, as a compliment to you, that I think from reading

Hansard that this committee has a very clear view of what the problem is in terms of the Ombudsman, a clear view that there is chasm between the committee's aspirations, I believe, and the Ombudsman's views as to what her responsibilities are, and I think they revolve around the word “independence.”

There is no such thing as an independent Ombudsman. I don't care what anybody says. There cannot be.

First of all, I think it's very interesting for every person who talks about independence to know what they mean; what does the word “independent” mean to you?

If you look at the Oxford dictionary, you'll see that independent means “not depending on any authority or any control.” The moment she uses that accepted English definition of the word, surely one comes to the conclusion that that isn't applicable. Secondly, it is self-governing.

What is important about the word “independence”—and I won't spend any more time on it than this—is to say that, first of all, the word “independent” or “independence” is like beauty: It's in the eye of the beholder, it's what you want it to be. There is no clear understanding of what “independence” or “independent” mean in terms of an elected, constitutionally responsible official. Obviously they're not independent.

What is intended and what is thought is, as I perceive it, independence of decision-making. You have an independence, you arrive at your decision based on your own best judgement, but even then you're not independent—surely you realize that—because you're dependent on the evidence. If you aren't dependent on the evidence, the courts will set aside any decision you've made.

So to say that a person is independent is just wrong, pure wrong, and shows a pathetic lack of understanding of the English word “independent” or “independence,” in my respectful opinion.

What I think one seeks in the Ombudsman is independence of decision-making, not independence of action, because quite clearly the Ombudsman is dependent upon the money provided to him or her by this Legislature through a process that's established. The Ombudsman is accountable to the Legislature. If you're accountable, you're not independent.

So obviously the word “independence” is at the bottom of the problem of a chasm between this committee and the Ombudsman.

1020

You all know, I'm sure, that there's been this problem with the Ombudsman, the view between this committee and the Ombudsman, since Mr Maloney was the first Ombudsman. I personally think the Ombudsman's office got off to an unfortunate beginning with Mr Maloney that it never really recovered from, but there has been this struggle between this committee and the Ombudsman for 16 years.



Until two years ago, or whenever it was that most of you were appointed to it and started to show us your own inclinations in this matter, I really don't think the committee accomplished very much in the 14 years before you got here. I'm hopeful you will continue your drive to reach an understanding as to what you all mean.

I've read a lot of material and I know you have as well. People keep talking about, "I don't want you to do this. I don't want you to interfere with that. I don't want this. I'm independent," and so forth, but I have never really seen on paper a clear list of things which this committee thinks the Ombudsman should do and I've never seen a clear list on paper of what the Ombudsman thinks he or she should do.

It seems to me that in presenting your position to the Legislature and hoping to gain its support it would be important to point out to the Legislature, "This is what we would like to obtain in terms of working with the Ombudsman, numbers 1 to 15, and the Ombudsman will not do 8, 9, 10, 11, 12 or 13." I've watched the debate flow back and forth on matters such as principle and definitions, and especially on the word "independence," but very seldom can I remember seeing clearly set forth the exact things this committee would like the Ombudsman to do and its role in the doing thereof and then put it to her or him and say: "Of those, are you agreeable to them? In what way are you agreeable?" The other way of going about it, instead of putting it on the shoulders of the committee and then putting it on the Ombudsman, is to put it to the Ombudsman and take it back to the committee.

I think you have an important role. I pointed out in the report that I made to the government a few years ago that the committee is the only forum the Legislature can have. It is too busy, it is too big, it is too occupied with planning ahead to be a reactive organization. Legislatures were reactive. When I was a cabinet minister and a member of the Legislature, the tendency in the 1960s was to react to emergencies, not to plan for them, not to plan how to deal with these matters. I don't think you can use the Legislature as the forum in which the Ombudsman reports. I think it has to be this committee, and I think you have a very important role.

I'm sad that we've gone 16 years and we're still fighting about the same things. As I read the transcript last week or whenever it was, it was just as if Mr Maloney was here; only he walked out of committee meetings. I don't think the spirit has improved. I think you can improve it, because I think you're showing now that, from what I've read, you really feel you have a job to do on behalf of the Legislature as well as the electorate.

I think that's really about all I can say at this stage. Are there some questions anybody would like to ask, or would you like to have a discussion? I think it was planned that I would be here for an hour, so I'm going to stay here for an hour.

**The Chair:** Thank you very much, Mr Macaulay. Questions and/or comments?

**Mr David Ramsay (Timiskaming):** Mr Macaulay, I really appreciate you coming here today. I just must tell you that I'm a real fan of your report, *Directions: Review*

of Ontario's Regulatory Agencies. I quote it very often in this committee. I've found it a very good guide to me in my deliberations in this committee and I really agree with your point of view.

I appreciate your comments today that maybe what is needed is a clear list. That, I think, is what we've discovered in this committee, that this original legislation, which was first passed in 1984, really can be quite loosely interpreted. I think you're right. This is why we have decided we want to review the legislation and bring it up to date. As you're aware, as everybody else is, much has changed in law and legislation since the original enactment of the Ombudsman Act, and because various ombudspersons can interpret this the way they see fit, I think you're right; I think we need to revise the act so that the roles and responsibilities of each party are clearly spelled out so that we cannot have differing interpretations. I think that's probably our challenge here. It's certainly why I'm very interested in membership on this committee.

I was wondering in that regard if you have any recommendations as to, when we talk about accountability, whether you believe the ombudsperson should be reporting maybe, say, to just this committee in all aspects, for instance, fiscal responsibility, recommendation-denied cases, other aspects in regard to the office. Would you see that there would not be sort of one-stop shopping, that the ombudsperson would be going to the standing committee on public accounts or the standing committee on estimates for its estimates and that sort of thing, or do you think it should be all brought under the umbrella of this standing committee?

**Mr Macaulay:** Could I make a comment, Mr Ramsay? It was inadvertent on your part, but I think you indicated that the act was passed in 1984. I think it was 1975.

**Mr Ramsay:** I'm sorry, that was a revision. That's correct.

**Mr Macaulay:** No, it's all right.

The second point I think I'd like to make is this: My experience from being here, and I observe, with the tremendous pressure on government today—and by government I mean all of you, the Legislature—it's a very long, time-consuming process to amend a piece of legislation. I think you have the best, fastest relief to pass some rules and regulations of your own for your own committee, present them to the Legislature and get it to either support or amend them the way it wants. That's the fastest way to the men's washroom.

The second thing, which would take a little longer, would be to have the standing order of the House amended. The third thing, which would take the longest of all, would be to have the act amended.

Frankly, there are some—I don't know exactly where to start on that. The act is a complicated act, and I think the courts have interpreted it to give the Ombudsman greater power than I think the originators of the act had intended in 1975 as I sat and talked it over with them. On the other hand, in 1987 the Supreme Court of Ontario and the Court of Appeal wagged their fingers at the Ombudsman and

said, "You be careful." It didn't say exactly that, but, "You be careful; there's a limit to your powers."

Amendment of the act I think would be hard to accomplish and would take a long time and would create a great fuss. In the meantime, by altering—no, not altering—clarifying the standing order of the Legislature—and I think what it needs is clarification. I saw it reported by your Chairman. If this is the one I'm thinking of, it was reported in one of your recent meetings. He read it to the committee. Well, you know what it is in any event. I wish I had it here in front of me.

1030

I do have it. It's page 1115. I'm sorry to take up so much of your time. "Standing committee on the Ombudsman which is empowered to review and consider from time to time the reports of the Ombudsman as they become available;"—I think it's perfectly clear what that is—"and, as the committee deems necessary, pursuant to the Ombudsman Act, section 16(1), to formulate general rules for the guidance of the Ombudsman in the exercise of his or her functions under the act."

That's never really been done. What has been done is quite inadequate. I don't mean to be offensive, and I hope you'll understand that, but I want to be honest with you. I've spent some time coming here and you've been gracious enough to be here while I was here. There's no point in me fibbing about it: I think the rules that you have provided are inadequate. You could, and that's where I would start.

That is the standing order. I hadn't completed the reading of it. I think it says what it intended to say, and that was to give you a fair amount of responsibility, but it hasn't been interpreted that way by the Ombudsman. I think it could be clarified. I wouldn't say amended; I would clarify what it means. I think the standing order, or whatever you guys call it, could be clarified. Then I think you should have some rules of your own, present them to the House to be passed and approved by the House. Then you'd be in business. If you didn't get the act, that would be unfortunate, but I think one has to be realistic. It takes three to four years to get an amendment to a piece of legislation unless there's a real consensus and real pressure, public pressure.

**Mr Ramsay:** I think that's excellent advice.

**Mr Macaulay:** Well, it may not be, but it's what I'd do if I were here.

**Mr Ramsay:** I think you're right. I think you've injected a sense of realism, in my mind anyway, as to what we're about in this committee right now. Maybe in the interim we could take your advice to establish some rules, as we are allowed to do under the act. I just want to ask you about that. There are three sections in section 16—and I'll just read them—that give us authority to do as you've just suggested.

Subsection 16(1), under "Guidance rules," says, "The assembly may make general rules for the guidance of the Ombudsman in the exercise of his functions under this act."

Subsection 2 reads, "All rules made under this section shall be deemed to be regulations within the meaning of the Regulations Act."

I worry about subsection 3 a little bit. "Subject to this act and any rules made under this section, the Ombudsman may determine his or her procedures." There's a bit of latitude there—

**Mr Macaulay:** Yes, there is.

**Mr Ramsay:** —for the Ombudsman to react to the new rules or regulations that we might pass here in the Legislative Assembly.

**Mr Macaulay:** Mr Ramsay, can I interrupt and remind you of something that very few people ever seem to think about? We haven't had a minority government in the province since 1975 except that for the one year, or whatever it was, that Mr Peterson led the government. It was a minority government that enacted that legislation in the first place. It was a minority government that enacted the regulations etc. I wasn't here at the time, but I do know that the tendency with legislation, even when you have a majority government, is that the legislation is drafted by a whole flock of people. Often they don't interact together.

I think the recent legislation—well, all right, I won't get into it. What happens is everybody takes a little nip off it and then, especially when you have a minority government, what happens is that it gets sent back to this and sent back to that, and the government finally gets to the stage of, "Oh, my God, please let's just get the damn thing through so we can get on to something else." Very often they don't even want the amendments that are being proposed, but it's the only way you can get the legislation through.

Maybe this doesn't appeal to you, but I know that it was a minority government that was dealing with this at the time. Maybe that made it a good piece of legislation. I'm not criticizing it; I'm just simply saying that's the process. Therefore, please don't look at that legislation, the regulations, the House orders and so on and conclude that this is how you guys would do it today. You have to, in those periods of time, make concessions in order to get any legislation through.

**Mr Ramsay:** I think you're right. From what you've said today, I'd like to proceed, in a sense as you've suggested, if I can interpret it this way, incrementally. I like your idea of looking at establishing the rules and regulations that we can under the act, and then we could work towards changing our standing orders and work further towards, in the long run, amending the act. But I think maybe we could do all three that you suggest, working towards amending the act so that we can get on with the job this committee wants to do. I'm very pleased with that advice.

**Mr Macaulay:** You asked me a question which I didn't answer, and that was whether the finances of the Ombudsman should be dealt with by this committee or by the standing committee on estimates. I really can't help you in that respect.

I can observe, as I think you know, that none of the other agencies—and frankly, I think the Ombudsman is one of 515 agencies in this province. We have many of



them. We've got the labour relations board; it's independent. Well, it isn't independent but it's supposed to make its decisions independently. We've got the Environmental Assessment Board, the Ontario Energy Board. We've got all kinds of boards, and 95 of them are adjudicative, make decisions, and none of them—there is one committee, the legislative committee on agencies, boards and commissions, that looks at all of these committees. It doesn't have enough time to do them, but it looks at them as best it can with the time available.

It doesn't look at their finances, and by analogy, I wouldn't treat the Ombudsman any differently than any other agency. I would leave its financing with the general process that we have for financing agencies. That committee looks at lots of agencies, all of the agencies, and it may not have time to go into any depth. I understand the Ombudsman has not had an in-depth look by that committee in four years, which I think is sort of unfortunate. But I'd be inclined to leave the financing out of this committee and leave it where it's dealt with at the present time.

But, please, you know more about it than I do. In the last three years all I've been is an observer, a teacher and a writer and so on about the Ombudsman, where it fits in the whole overall structure. I don't know anything about the day-to-day routine, but I would be inclined to leave the finances where they are.

**Ms Margaret H. Harrington (Niagara Falls):** I'm very pleased that you're here. I think having the background that you do is very important for us at this point in time. As you mentioned, most of us have only been here a year or two.

For those who don't know, I would like to put on the record that Mr Macaulay was a member of the Legislature from, I believe, 1951 to 1963, which is a good long time, and also during that period was Minister of Energy, Minister of the Environment and Minister of Industry, Trade and Technology. So you certainly have a perspective to bring to us.

You stated that the very important thing about the Ombudsman was to be independent with regard to decision-making and to be publicly accountable and that this was the balance that has been the difficult part. Do you believe that the word "independent" in our definition should be actually changed to say "independent in decision-making"?

**Mr Macaulay:** Yes, if anybody didn't understand it, if that isn't clearly understood. I think your Management Board has made it clear and has used that phrase frequently. There are many precedents. But I would just say again to you, ma'am, if you would have your secretary fetch out my large two-volume edition on administrative law, you would find a discussion of the word "independence," and if there's any doubt in your minds about "independent"—I don't think the word "independent" turns up in the legislation itself, does it? Correct me, please, if you will. Is the word "independent" or "independence" used in the Ombudsman Act?

**Ms Harrington:** I don't think so. I'll have to ask our—

**Mr Macaulay:** Well, I don't think it is. If it isn't in there, I don't think you'd have to add the words "of

decision-making." But clearly, when you're talking to the Legislature, I think it would be a lot easier for them to understand. They aren't independent: They're governed by the Constitution, they're governed by the Charter of Rights, they're governed by their own legislation.

1040

This business of "independent" and "independence" is just highly overrated. We're accountable, and the Ombudsman is accountable. A minister, a cabinet—the Premier isn't independent.

If you would have your secretary fetch and copy those few pages, I hope it might be of use to you. But that's what it means, Margaret Harrington, that's what independence means if you're using it at all: independence of decision-making for those who make decisions.

**The Chair:** Just for a point of clarification for the members. The word "independent" does not appear at all in the act. Go ahead, Ms Harrington, please.

**Ms Harrington:** I felt it was very helpful that you had some concrete suggestions to give us direction in this committee. What you suggested was a list of things we could both look at, the Ombudsman and this committee, and see which ones we agreed to.

**Mr Macaulay:** I'd start with you, if I were you, okay? I'd start with you and I'd say, "These are the things that I think"—and I don't mean just you, ma'am; I mean your committee. "These are the things we think this committee should do in relation to the Ombudsman."

Then, after I had listed those in fair detail—and I don't mean just some big ambiguous pigeon flying over; some real detail—in those breakdowns, then have the Ombudsman in and say: "Now let's sit down and go over this list. We're all grown-ups, civil people and let's go over the list. If you don't like the way we've phrased number 6, let me have your phrasing," and you give her some time in advance to consider that. I think you then start to have a concrete plan for the Legislature to look at.

If you come in with a lot of generalizations about independence etc, the Legislature's just going to put the back of its wrist to its forehead and say, "Oh my God, here we go again."

But if you can show them: "These are the things we think we ought to do. These are the things the Ombudsman thinks we ought not to do. Now make up your mind. Are you going to support us or are you going to"—how you handle yourselves will be very important in how you sell it.

**Ms Harrington:** Just one further question about that. You would see that as lying under section 16 of the act, with regard to our right to lay down rules, which you say has not been done.

**Mr Macaulay:** I don't think it's been done effectively, forcefully enough. Yes, I think you can. I've always been a great believer in, if you want to do something, do it; let somebody else stop you. If you think you should have rules—and I think the order of the House clearly gives you the right to make rules; I think it does—make the rules and let somebody else have it declared that your rules are ultra vires. If you believe there should be sort of a constitution

between you and the Ombudsman, then create it and let somebody else say, "You're out of line there."

**Ms Harrington:** But I just want to make clear, from your reading of section 16 of the act, it is perfectly appropriate that this committee look at the notion of rules.

**Mr Macaulay:** I think so.

**Ms Harrington:** Thank you very much.

**Mr Bill Murdoch (Grey):** I just want to also thank you for coming, and just continue on that same line.

**Mr Macaulay:** You aren't Bill's son, are you, from—

**Mr Murdoch:** No, no, different. I sometimes show people his picture and say, "That was me before I grew the beard." No, no relation.

**Mr Macaulay:** He was the first fellow who taught me—he was Speaker when I was here—the phrase which I think is wonderful, that beauty is in the eye of the beholder.

**Mr Murdoch:** No, I never met him.

**Mr Macaulay:** Well, he's a great guy. I'm sorry to interrupt.

**Mr Murdoch:** That's fine. I can show people I have my picture already painted on the wall. Even though it doesn't look like me, it's got my name. He even spells his name with an "h". We do have another Murdock in the House and she has a "k."

I just want to continue. Our committee has been struggling for two years to try to find our place in the whole situation with the Ombudsman, because there seems to be this conflict of whether we should be here or not. I liked what you had to say about setting the rules or setting some guidelines that we should then work out with the Ombudsman, and I think that's what we should be doing. I guess that's why we're having this review, because we just couldn't seem to find our place; we seem to have conflict with the Ombudsman. So this is one of the reasons we decided to do this review.

We've been criticized by different people and by the Ombudsman for even having this review. As you probably know, she's refused actually to visit us if it's something to do with the review. We do have this problem. I think what you're saying is that once we're done is to go over everything and then sit down and say, "This is what we think the direction should be," and then get her comments. That's one of the best suggestions we've had.

**Mr Macaulay:** If she won't give you her comments, then she has acted in a way that I would expect she would not do. I would expect that she would realize that you are an agent of the Legislature and you have initiated a study which you think is in the public interest. You will produce whatever you produce, and she will then have her opportunity before the Legislature, if she wants to occasion it, to have you turned down by the Legislature. It has the final, ultimate authority. But I know the Legislature has said, "Look, we are just too busy to do everything, and we are picking a committee." I think even Mr Maloney acknowledged that in a very lengthy paper he prepared.

**Mr Murdoch:** I am thankful for the comments.

**Mr Macaulay:** I'll bet she'll help you. I'll bet she will.

**Mr Murdoch:** I'm hoping she will.

**Mr Macaulay:** I think it would be unfortunate if she didn't, but if she won't, go ahead anyhow.

**Mr Murdoch:** That's what we'll have to do, but I'm hoping she will also.

**Mr Macaulay:** I am, too.

**Mr Murdoch:** But to this date we've had problems.

**Mr Macaulay:** She's a very nice person, personally, and I would hope she would do that.

**The Chair:** Any further questions and/or comments?

**Mr George Mammoliti (Yorkview):** What if she doesn't?

**Mr Macaulay:** I'd go ahead, and I would advise the Legislature in your report—I'd make your own rules. I'd offer them to her for comment, and if she doesn't do anything, then I would say, "These are the rules." If you think they require approbation by the Legislature, then I would put them to the Legislature and ask for its approval.

Frankly, I wouldn't put on Hansard the likelihood that she won't. I would leave it that you think she will. If she doesn't, I think you should make your rules, and then you'd report, obviously, "We didn't have the benefit of the Ombudsman's position on this." I would think at that stage, if the Legislature felt that the Ombudsman should report, it would have the authority to order her to come in here and report. She surely doesn't want to face that.

We have a concept that we operate under in this country. It's called the supremacy of Parliament, and none of us is independent of that. By "Parliament," that means the Legislature, within your jurisdiction.

**Mr Mammoliti:** I agree with you. Thank you.

1050

**The Chair:** Thank you very much, Mr Mammoliti. Any further questions or comments? Seeing none, I want to thank you, sir, for taking the time to appear before us this morning. I know your schedule is very busy, and we all do appreciate it very much. Do you have any final comments, sir?

**Mr Macaulay:** No, I don't think so. Let me just offer this: If, when you decide to make up your list—sorry, I didn't mean to be that presumptuous. If you decide to make up your list of the things you think this committee should do, then I would certainly be very happy to come back and go over them with your secretary, or whatever might be useful.

Secondly, when you come down to preparing some rules, if you want to do that, if that commends itself to you, I again would be very happy to—I've invested a lot of my life, and my father before me and my brother and others in my family, my grandfather; we've all been in the political life of this country for a great many years, as teachers and whatever. I would like to make a contribution to this and if, by being here—I don't ask you to accept my views as being uncontested. Get the views of as many people as you want, but I'm certainly more than willing to



help you put together your list and help you with your draftsmanship, although I think there are plenty of really competent people around to help you.

**The Chair:** Thank you very much. I understand Ms Harrington has a final comment to make.

**Ms Harrington:** I just realized that there's one area we haven't discussed that I would like your comments on while you're here; we have to take advantage of it. It is whether or not tribunals should be reviewed by the Ombudsman. Do you feel there is any problem with tribunals?

**Mr Macaulay:** In the report I prepared for the government and in my book, in the chapter on the Ombudsman, I talk about the problems of the Ombudsman and administrative—shall we call them tribunals? Is that the point you're directing me to, ma'am?

**Ms Harrington:** Yes.

**Mr Macaulay:** There are a lot of problems. Let me tell you, if I may, what really put the hair on the back of your heads straight up in the air, as a person who has served on one of these agencies. I was chairman of the Ontario Energy Board for a few years.

I started the board in the late 1950s, wrote the legislation for it, and then in the 1980s Mr Davis, I guess it was, asked me if I would leave my practice and come back and go to the board. It needed some restructuring. I went back on a five-year contract, but I only stayed for three because we got things moved around quite quickly.

Oh my God. I'm 71. What was I going to tell you?

**Mr Ramsay:** Tribunals.

**Mr Macaulay:** Oh, yes; all right. My experience, in working on the tribunals, is that I got really upset when the Ombudsman started giving speeches through some of his—at that time—representatives that they were going to subpoena the private notes of an adjudicator and look at the decisions in light of the notes the adjudicators had made at the time.

Let me just tell you that while you're sitting in a hearing, a witness may come forward and you might write down, "I can't believe a God-damned thing this guy says," and then a day later you conclude you're wrong, that you can believe him. Now, you get those notes subpoenaed and it just makes an ass of the whole process. They were not only going to subpoena—an attorney general in or about that time, without nailing it down to anybody, said to me, "Macaulay, take your notes home and burn them." My God, what a senseless way of dealing with a thing like that.

Not only that, but the Ombudsman's spokesman was making public statements to the effect that members of adjudicative agencies were going to be called and put on oath and cross-examined to see if there had been a split in opinions. I can tell you, just as you're going to write reports here, you don't all agree, in the beginning, on the report. One fellow may draft it and then other people may have observations and adjustments and so on with it. That's inevitable. It's called the iterative process of arriving at a decision. One person drafts and other people say: "I can't accept that. I'm going to dissent."

Dissents are the worst possible things you can get, because the public, which is dependent upon the pronounce-

ment, doesn't really know—"If I brought it back again and I just got that guy, maybe I'd get what I want." So you try to avoid dissents and you iterate and you work it out.

Now, if you can subpoena people who are adjudicators—imagine if you could subpoena the three members of the Court of Appeal. You put them under subpoena; you want to see their private notes. I don't want to carry on about this but, yes, I think there are real problems in the Ombudsman being involved in the decision-making of another independent organization. Why? Because (1) most of the acts provide for an appeal to the courts; (2) we have what is called judicial review and we have a Judicial Review Procedure Act whereby you can take a decision of an adjudicator of that nature to the court for a review; (3) under a tremendous number of acts—there used to be nearly all the acts, but I think there are only seven at the moment—you can petition to the cabinet to reverse the decision. And (4) most boards, or many boards, in any event, have the capacity to review their own decision.

So you've got four ways of looking at them. I'm not talking about reporting agencies; I'm talking about agencies that make decisions that are binding on people. To my mind, the Ombudsman ought not to be involved in that.

Interestingly enough, the Ombudsman was going to take these extreme measures, which are unknown almost anywhere in the world, and at the same time the Ombudsman's last report showed that he had not had one single complaint about one of the 515 boards in Ontario. Why go out making those loudmouth statements when you can be disrupting the whole credibility of the adjudicative process which has been established in this province? I just think the Ombudsman shouldn't be involved in the adjudicative process because, as I say, there are four methods of relief.

On the other hand, the chairman and the board members themselves would be perfectly willing to work with, and I think have in recent years worked with, the Ombudsman without having any confrontational process.

I don't think I've helped you at all, have I? You're going to say when I leave, "Don't have him back."

**Ms Harrington:** You certainly make it clear that you don't see a role for the Ombudsman with regard to the adjudicative agencies.

**Mr Macaulay:** No, I don't, ma'am.

**Ms Harrington:** When you, in your last statement, said there was a working-with relationship—

**Mr Macaulay:** Yes, there is.

**Ms Harrington:** What do you mean by that? What kind of relationship?

**Mr Macaulay:** Let me put it this way. Some years ago I encouraged the agencies to set up an organization in Canada called the council of administrative—I'm sorry, I don't remember the name, but I was deeply involved in its creation—whereby there is now a council in Canada to which most agencies belong. They're teaching their courses, there's an exchange of process and so on.

One of the things we were very anxious to do was to have the Ombudsman in Ontario, for example, where I happened to be, realize that instead of sending in a summer student to lay down the law to us, "We want this and we

want that, and we want it by 3 o'clock today"—that's how I was talked to on occasion, and I don't think that has to be the case. In any event, what we did, and by "we" I mean me and others, made it very clear: "Look, if you want anything, let's talk about it, and if you think we've made a decision that is incorrect, let's talk about it. Let's not send in people with missiles"—

**Mr Mammoliti:** That office was set up to stop arrogance, wasn't it?

**Mr Macaulay:** Well, listen. Just take it from me—

**Ms Harrington:** Can I just try to clarify? Are you saying that the Ombudsman's office could ask an agency with regard to how it's functioning or a particular case?

1100

**Mr Macaulay:** As to how they're functioning, I can't tell you whether they have or not, but if you look at the Ombudsman's report from several years ago, you will see that they had complaints about how some persons had been treated by a decision of a particular board or commission or agency.

You see, my problem is that I haven't kept up to date in the last few years. I'm talking about when I was writing my report in 1988, and that's four years ago. certainly the Ombudsman reports at that time disclosed that they were addressing various agencies about decisions they had made. Then the next year there weren't any at all, but they were still making speeches about what they would do if they had a problem.

I think there is a more civilized way of going about it than turning out the light and going in and bludgeoning people to death. I believe that if they can show that an agency decision is incorrect, like a decision of a single civil servant, likely they have the authority under the act, as it stands, to do it. Frankly, my concern isn't whether they can do it, but how they do it.

**Ms Harrington:** How they would find that the decision was incorrect?

**Mr Macaulay:** Yes. I pointed out about subpoenaing notes and subpoenaing members of the—but I don't think it's necessary. You asked me really two questions: Can they do it legally? I think legally they can do it. Should they do it? No, I don't think they should do it. Thirdly, if you find out legally they can do it and you come to the conclusion that they should be able to do it, then have some rules.

If she's going to drag the Worker's Compensation Board in front of the House—she or he or he or whoever it may be—there should be some basic rules of how you go through the thing in front of this committee to start with, because you're dealing with a structure of some major consequence, and I don't think it should be attacked just to show how independent somebody is.

**Ms Harrington:** I think we'll have to look into that further.

**Mr Macaulay:** In the report that I made, I recommended to this committee that you should establish some rules that if the Ombudsman feels there is an appropriate case for reviewing a decision of an adjudicative agency,

board or commission, it should be done through some rules you've established as to how it should be done, and not just send in a summer student with a shotgun.

**The Chair:** Thank you very much, Mrs Harrington.

**Mr Macaulay:** You want to go and do something else; I can see that.

**The Chair:** Mr Ramsay, you had a question or comment?

**Mr Ramsay:** Mr Macaulay, since you're still here, there's something else I wouldn't mind your advice on. When you speak of setting out some rules and regulations, which I agree with, one of the areas that is only permissive in the legislation is that the Ombudsman can bring to this committee these recommendation-denied cases to us. In that, this committee is a very strong ally of the Ombudsman in that then we can look at the case that has been denied by whatever ministry, and bring it forward and bring it to the Legislature and actually get something done, and that's happened on occasion.

Since the appointment of this Ombudsman, we have not received any of these cases. When we ask the Ombudsman about that, she will say that many have been resolved, others can still be resolved and, I guess, in her mind, there are some that have not been resolved: The recommendation has been denied, but as far as she's concerned, it's over and she does not want to pursue it any further.

I was wondering if we should put some sort of mandatory language in the rules and regulations, or if we get to the point of legislation, that would compel the Ombudsman, because she has no powers other than recommendations, to bring these cases forward so that we could alleviate some of these outstanding problems.

**Mr Macaulay:** I don't know. I'm positive she would object to that, and I think the former Ombudsman, as I read the transcript, when he was here a few months ago, without saying it very openly—maybe he did say it openly; that's not appended as a criticism—wasn't sympathetic to that either. I don't know exactly. I haven't really thought very much about it. I haven't spent a lot of time thinking about it.

It does seem to me that another way of going about it, rather than requiring the Ombudsman to report to you cases that are unresolved, is to make some machinery available whereby the persons who have unresolved cases can come to you. You see, that's a different way of going about it, treating you as the representative of the Legislature. The person didn't get what he'd hoped to get from the ministry, didn't get it from the Ombudsman, for a number of potential reasons. That person could then come to you rather than you forcing the Ombudsman to bring incomplete cases to you. I don't know whether that would commend itself to you, but it's certainly another way of dealing with it.

It'll be hard to draw the line, once you get into a case that she hasn't finished dealing with, to say, really, that you're leaving with her the independent decision-making capacity. That's what I would worry about. Whereas if the person comes to you, then you have a duty, I would think,



on behalf of the public, to make a decision; you're not really making a decision on her.

I'd want to think it out, but that's another way of doing it. But I think there are risks, from her point of view, of you upsetting the independence of the decision-making concept by you getting into a decision before she's made a decision, if you know what I mean.

**Mr Ramsay:** Yes. I appreciate your advice. Thank you.

**Mr Macaulay:** You're obviously being very sympathetic and understanding, and I'm encouraged to be here, to see the nature of the questions and the tones you people use. I wish you well in what you're doing; it's a very important job. I don't think anybody really realizes how important it is until it's given to them to do. And you have it to do. I think for 14 years not enough was done. I hope

you'll hang on to the ball now and run with it until somebody trips you up.

**Mr Ramsay:** Thank you very much.

**Mr Macaulay:** Thank you, Mr Morrow, for inviting me here, and Franco—I never could pronounce your last name, but I'll remember you in my will.

**The Chair:** Thank you very much, sir, for appearing before us this morning.

On November 4 we have appearing before us the Ontario Public Service Employees Union and the Ontario Hospital Association.

We stand adjourned until 10 am, November 4. Thank you very much.

The committee adjourned at 1108.





## CONTENTS

Wednesday 28 October 1992

<b>Review of Office of the Ombudsman of Ontario</b> . . . . .	B-139
Robert W. Macaulay . . . . .	B-139

### STANDING COMMITTEE ON THE OMBUDSMAN

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#### **Substitutions / Membres remplaçants:**

**\*Harrington, Margaret H.** (Niagara Falls ND) for Mr Perruzza

**\*Mammoliti, George** (Yorkview ND) for Mr Johnson

**\*In attendance / présents**

**Clerk / Greffier:** Carrozza, Franco

**Staff / Personnel:** McNaught, Andrew, legislative counsel and research officer, Legislative Research Service

202  
C 99  
053

B-11



B-11

ISSN 1180-4300

## Legislative Assembly of Ontario

Second session, 35th Parliament

# Official Report of Debates (Hansard)

Wednesday 4 November 1992

## Standing committee on the Ombudsman

Review of Office  
of the Ombudsman

Chair: Mark Morrow  
Clerk: Franco Carrozza

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

# Journal des débats (Hansard)

Mercredi 4 novembre 1992

## Comité permanent de l'ombudsman

Examen du Bureau  
de l'ombudsman

Président : Mark Morrow  
Greffier : Franco Carrozza





### **Table of Contents**

Table of Contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

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La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 4 November 1992

The committee met at 1013 in room 151.

### REVIEW OF OFFICE OF THE OMBUDSMAN

**The Chair (Mr Mark Morrow):** I see a quorum. If I may, I'd like to call the standing committee on the Ombudsman to order. I'm Mark Morrow, chairman of the standing committee.

### ONTARIO PUBLIC SERVICE EMPLOYEES UNION

**The Chair:** This morning, we're continuing our review of the Office of the Ombudsman and I'm pleased to have before us the Ontario Public Service Employees Union. I want to welcome you gentlemen. Begin when you're ready. You do have a half-hour and I'm sure the members present would like to ask you some questions and/or have some comments when you're done. Although I haven't done it, would you please state your names for the record when you're ready to begin.

**Mr Fred Upshaw:** My name is Fred Upshaw and I'm president of the Ontario Public Service Employees Union. Tim Little is our legislative liaison on staff at OPSEU.

I want to start off by simply saying I'm pleased to be here to make this presentation. The Ontario Public Service Employees Union appreciates this opportunity to submit its views on the Office of the Ombudsman. OPSEU brings to bear, on many of the questions developed for this review, a wealth of experience in delivering Ontario's public services. Our 105,000 members play a pivotal role and a very large proportion of the government activity covered by the Ombudsman Act.

OPSEU made a submission to your committee in 1988 in response to the Ombudsman's proposal for extended jurisdiction; that submission is attached for your information. Responding to the committee's recent invitation, we will augment that submission with comments reflecting OPSEU's more recent public policy concerns.

Protection for complainants: OPSEU members are on the front lines of public services in Ontario. Public-minded OPSEU members have exposed many government wrongdoings such as jail overcrowding, coverup of pollution levels, illegal forestry permits. Too often the courage of those who risk their livelihood and health has not been recognized by the statutory protection from retaliation by embarrassed governments.

The Ombudsman currently lacks enforcement powers to protect a public service whistle-blower from any negative actions taken against him or her as a result of a complaint.

The Ombudsman Act must be amended to provide full protection for all workers whose dedication to the public's welfare compels them to bring forward complaints. An effective way to ensure such protection would be to include coverage in the act for complainants under promised whistle-blowing legislation.

As committee members will be aware, in the days of the 1985-87 accord, the Ontario Law Reform Commission embraced much of OPSEU's argument regarding whistle-blowing protection and political rights for public employees. Implementation of the OLRC recommendations has been a stated priority of two governments over the past six years. We understand that such provincial whistle-blowing legislation for Ontario is imminent. We commend the government in advance for such an investment in the public good.

We believe that members of the standing committee want to improve both the effectiveness of the Ombudsman's work and future complainants' trust in the whole investigation process. These objectives will more likely be realized if you urge the Legislature to infuse the Ombudsman Act with solid whistle-blowing protections.

In our comments of 1988, we did suggest that OPSEU's membership would appear to have less need of this kind of protection when involved with complaints to the Ombudsman than workers who lack union protection. At that time, though, it was necessary for us to point out the chilling effect of the Crown Employees Collective Bargaining Act.

Until now, CECBA has inappropriately denied collective bargaining rights to an extraordinarily large number of public employees. This has meant many thousands of workers without a collective agreement or effective grievance procedure and thus less willingness to expose problems to the Ombudsman.

However, we are optimistic that recent progress in the recognition of bargaining rights for 9,000 excluded public employees will diminish the hesitancy many would feel in coming forward with concerns to the Ombudsman.

For the 65,000 members of the OPSEU Ontario Public Service bargaining unit, CECBA has meant denial of the right to bargain such critically important issues as pensions and the introduction of new technologies. These are the kinds of government decision-making which have caused OPSEU to approach the Ombudsman for assistance. Here too there is reason to be hopeful. Announced reforms to CECBA will widen the scope of collective bargaining and, in so doing, decrease the need for our membership to seek out the Ombudsman's advocacy services.

Despite the improved rights that we hope will soon become law for unionized and unorganized public employees, OPSEU remains convinced that all employees should be entitled to full protection under the Ombudsman Act from any form of employer sanction.

We have been asked specifically for our thoughts on the possibility of the inclusion of children's aid societies within the Ombudsman's jurisdiction.

In our 1988 submission, we framed our support for the extension of the Ombudsman's jurisdiction by outlining our commitment to the principles of social unionism.



For OPSEU, encouraging a wider mandate for the Office of the Ombudsman, including children's aid societies, is consistent with our proud history of advocacy on behalf of all our client groups. To support equity, fairness and consistency in the treatment of Ontario's vulnerable communities, OPSEU will continue to oppose compromises or wrongdoing in the delivery of any public services.

To repeat the commitment to our clients we outlined in 1988, OPSEU supports a broader scope for investigations under the Ombudsman Act, fully aware that the redress people may seek could be directed at activities of our members, as well as those of managers or others. Our commitment to protect the rights of our membership calls for us to also repeat our determination to secure fair treatment for members whose work is the subject of any investigation under the act.

#### 1020

Across Ontario OPSEU represents over 1,000 members working in children's aid societies. These workers are charged with an immense responsibility: ensuring the safety and wellbeing of vulnerable children. Like some 32,000 other OPSEU members in Ontario's broader public sector, children's aid society employees carry out critical and mandatory functions under provincial statutes.

We trust that when CASs are brought under the mandate of the Ombudsman, the attention of the province and the public will be more sharply drawn to critical issues of accountability and consistency of service. When unelected boards of directors operate community-based public services, we can only hope the Ombudsman is able to help expose compromising gaps in those services.

In the case of jurisdiction for the Ombudsman over public hospitals, we refer you to Care and Quality, OPSEU's submission to recent hearings on the Public Hospitals Act. In that brief we expressed our belief that hospitals must be more accountable and more responsive to the public.

"Hospitals must be regarded as being as much a part of the community as our other health agencies. Mechanisms must be established to ensure accountability of all health agencies to their communities.... OPSEU believes that hospital boards should be elected.

"There must be an active, accountable relationship between the board members and the community being represented. Boards should be hands-on working bodies that could and should develop internal committees to liaise with the hospitals' communities."

Election of hospital boards, especially with membership split equitably between staff and the community, would provide an expert range of ombudsmen for hospital clients.

The health care system is being dramatically transformed by serious changes in the direction of policy and continuing cutbacks in federal and provincial funding. There are over 5,700 OPSEU members in 90 public hospitals, who know first hand that the public needs vigilant representation to ensure that health care decision-making leads to improved care. In the absence of direct democratic elections for hospital boards and seats on each board for hospital staff, the participation of the Ombudsman will be particularly welcomed.

OPSEU's view of the Ombudsman's jurisdiction is based in part on our conviction that essential services for Ontario's people are best delivered by a one-tier delivery system. Similarly, a single level of service is best delivered by the government that funds it. There is considerable and understandable confusion in the public over general welfare assistance, delivered by municipalities in most areas, and family benefits, administered by provincial employees. Vulnerable people often move from one type of assistance to the other, struggling to know who their case worker is or why they may have been denied benefits.

As this muddle of services continues and as hard-pressed municipalities perpetuate a patchwork quilt of welfare services across the province, it is hardly surprising that the Ombudsman seeks to have the jurisdiction to investigate general welfare assistance. It is our view that the most effective means of ensuring fair and equitable delivery of such an important statutory service is to unify the administration at the provincial level, where the Ombudsman will have jurisdiction under the current act.

OPSEU has a great deal of experience in attempting to provide professional, quality services and care in the midst of underfunding and understaffing. This is certainly true, for example, of our members who work in children's aid societies and public hospitals, two of the public services that are subject to your committee's review.

Nothing could more swiftly undermine the Ontario public's confidence and trust in the Ombudsman than failure to provide financial resources commensurate with any expansion of jurisdiction. OPSEU members include support staff, case aides, investigators and administrators. We can relate directly to fellow workers within the Office of the Ombudsman, whose case loads have tripled since 1982. We would urge the members of the standing committee, therefore, to strongly advocate on behalf of the Ombudsman. She will require a much enhanced budget to match a broader mandate.

The standing committee has invited comment on the issue of authority or requirement for the Ombudsman to conduct educational programs. A valuable service like that of the Ombudsman must not be the exclusive preserve of those with the skills, education and other resources to seek out her office. The work of the staff of the Ombudsman should help to empower marginalized people.

The Ombudsman's survey in 1991 regrettably found a level of awareness of her services significantly lower than that of the Ontario Human Rights Commission or the Workers' Compensation Board. A high proportion of complaints came from vulnerable people. These facts suggest that the present Ombudsman is to be applauded for her outreach efforts, and that educational and outreach programs ought to be formalized at the regulatory level.

The committee has asked, should the title of Ombudsman be changed so that it is gender-neutral both in meaning and in connotation? Simply put, yes. No public office should continue to be labelled in a way that suggests males are the natural or preferred incumbent. OPSEU believes an appropriate name would be Office of the Public Protector.

Finally, OPSEU feels it is important to clearly express our support for an Ombudsman's office that continues to



be at arm's length from partisan political interests. We are especially concerned that legislators have recently attempted to circumvent the confidentiality provisions of the act in requesting file details from the Ombudsman.

OPSEU endorses the advice given by the Ombudsman to the members of the standing committee to maintain a graceful balance of independence and accountability.

The financial and administrative reviews provided through the Board of Internal Economy and the Provincial Auditor seem well crafted to ensure the public's confidence in the Ombudsman. If directly overseen or challenged in her decision-making by a government-dominated Legislative committee, we believe the Ombudsman's neutrality will be immediately and completely compromised.

**The Chair:** Thank you very much, gentlemen. Any questions and/or comments?

**Mr Frank Miclash (Kenora):** Mr Upshaw, thank you for your presentation. I certainly enjoyed it.

I'd like to go back to page 3 where you talk about public hospitals and election of the boards, especially "with membership split equally between staff and the community." As a former member of a hospital board, I take a look at that makeup and try to think of where you would fit in the executive director and the management staff of that particular institution, knowing that they are ultimately responsible for the decisions made. If half of your board is made up of staff and half representation from the community, where would they fit in?

**Mr Upshaw:** I would suggest that the way we do business today is through what we call partnership, and to me there's no problem in having a proper blend from the administrative side and from the staff side on a community board.

**Mr Miclash:** So you're suggesting that the split in terms of staff would be a split between administration and general staff?

**Mr Upshaw:** Yes.

1030

**Mr Gary Carr (Oakville South):** I'm sorry I missed some of your presentation. Mr Murdoch, who usually sits in this committee, called in and is sick today, so I'm just filling in. But I did get the chance to read a little as we were going along.

My question is with regard to the ultimate authority over the Ombudsman's office. As you know, the big problem we've got is the delicate balance: How do you have an arm's length relationship with some form of accountability? How do you see that happening? As you know, the accountability with governments is that at the end of the day they have to be re-elected and the people can judge.

When you're giving, as I read this, more power to the Ombudsman, how do you see the checks and balances? Let me just throw this up to you: If we have somebody in there, a hypothetical case, who isn't doing a good job and has overstepped powers or whatever, what would the procedures be for correcting that situation?

**Mr Upshaw:** Let me respond by using an example we've been reading about recently in the newspapers with

respect to the sexual harassment cases around the province. As these cases start to be exposed, more and more women who have been exposed to sexual harassment are coming out and speaking up. When asked why they hadn't come out in the past, it was because they feared the system. They need to have that feeling that they can make a legitimate complaint in strict confidence.

What we're saying is that arm's length will give people who have complaints the confidence to go to the Ombudsman's office and make those complaints without fear of retaliation, given the Legislative process that rules the Ombudsman. That should never be the case.

I can give you another example. I can recall in a hospital where I worked that we had a staff nurse who was responsible for the staff, and the administrator insisted that that health nurse turn over confidential records to the administrator. The nurse refused and was terminated. The confidence of the staff in confiding in that employee nurse meant a lot. Staff will not confide if they have any concerns in terms of any repercussions that might come from it. So arm's length is the only way, in our opinion, to ensure people's confidence in going and exposing things.

**Mr George Mammoliti (Yorkview):** It's nice seeing you again, sir. It's nice seeing you, Tim, as well. Tim and I go back a long way; we both came out of the Ministry of Housing.

I agree in terms of the change of name. I'm not too happy with "Ombudsman" either, and I think we've got to do something about that; I agree with you on that point.

Where I disagree is the expansion. I don't agree that at this point we should be looking at including children's aid societies, for instance. I'll tell you why before I ask you the question. I don't agree, because there are a lot of problems that come out of the office, there are a lot of internal problems within the office, there are a lot of communication problems within that office. That has been made very clear to this committee.

Shouldn't we address those concerns first and try to fix any of the problems that exist within the office as it is now before we expand the role of the Ombudsman? I don't believe we can do it at the same time. Shouldn't we fix what's there first before we expand it?

**Mr Upshaw:** Maybe if you had expanded the Ombudsman's role years ago you wouldn't have the problem you have now. It's not a case of going in there now and trying to do a patchwork job. What you have to consider is, why weren't the problems brought forward much sooner? By expanding the role of the Ombudsman's office, then maybe those problems would have come forward and by now they would have been fixed.

**Mr Mammoliti:** The point is that there's a problem there now. This is the first time I've been a politician, this term of office anyway, and I think that for the most part the people who sit on this committee have sat on this committee for the first time. So to answer questions in terms of why it hasn't happened in the past I think at this point is irrelevant. I think we've got to look to the future. I think this committee's done a pretty good job in terms of looking at the problem and seeing what we should be doing in



terms of recommendations to the Legislature. I don't believe one of those recommendations should be expansion—yet; I think it might come later on. The reason is that there are just too many problems within that office right now.

**Mr Upshaw:** Because I probably deal with a lot of those problems a lot more than other people, I say to you that if you extend the Ombudsman's role, people would come forward, and that coming forward would assist us in solving those problems.

I don't think it's relevant to say that what happened in the past happened in the past. That's not the point. The point is that the people who provide that service, which is an extremely essential service, should have the same opportunity as anybody else to come forward with complaints about areas that they feel jeopardize their responsibility in looking after these children. They should have that opportunity like anybody else.

**Mr Tim Little:** I was just going to add briefly to Mr Upshaw's comment. In reviewing the history of the committee, it seems that there have been very few opportunities for a review of the act or the standing orders. In 1990, an act to make some amendments died. It seems as though there are very few opportunities to make changes, with the realities of the legislative procedure, and to make a piecemeal change now would put many other important reforms, perhaps, on a back burner. It looks like your review is quite comprehensive, and if there are progressive changes to be made, grasp the opportunity to do so.

**Mr Mammoliti:** It could be a nightmare.

**Mr Little:** I would imagine that your recommendations would want to be as comprehensive as possible in the sense that, as we've suggested, don't make the expansion without ensuring and advocating that the appropriate financial resources are there. So if there's going to be expanded jurisdiction, then staff and budget and provisions to make sure it's effective would also be critical. Again, the reason for our caution there is that we've seen too often services undermined by a lack of resources. Your own experience might suggest that too.

**Mr David Ramsay (Timiskaming):** Mr Upshaw, in defence of all the members of this committee, I just wanted to refute something you said in your second paragraph under accountability, "An Accountable Office, Free From Political Expediency," when you said that we have circumvented the confidentiality provisions of the act in requesting file details from the Ombudsman.

We have not done anything in this committee that committees before us have not done in trying to address concerns that the public bring before this committee about how effectively a complainant's case has been investigated. In some cases, cases are outstanding to resolution two to three years, and what we ask for is details as to the process that the case has moved along, to ensure for us and for the people of Ontario that the Office of the Ombudsman is working effectively on behalf of the people of Ontario.

I guess the question here is, who watches the watchdog? The ombudsperson has a budget of \$9.5 million and is accountable to the taxpayers of Ontario. This committee

believes it's our mandate to make sure that office is accountable to the taxpayers of Ontario.

1040

**Mr Upshaw:** Once again, the people who must use the services of the Ombudsman's office must have a sense when they come forth that it's confidential. If they feel there's a possibility—especially the people I represent. You might say people in the Legislature are their bosses, yet they're coming forward with information that they could be punished for if it got out. If by going to the Ombudsman and making a declaration to the Ombudsman, then the file was going to end up in the hands of a legislative committee, which could be considered their boss, that could be detrimental.

**Mr Ramsay:** I agree totally with that. I think every member of this committee agrees with that. The only time we get involved is when the complainant comes to us as a committee and writes the committee through the Chair or the clerk to say: "I would like you to look at my file. I would like you to investigate the file that the Ombudsman has in regard to my complaint, because I am unhappy that it's taken 18 months"—or two years, three years—"to investigate my complaint, without resolution."

We don't go on some sort of witchhunt and say, "Gee, let's take a look at some file." As a matter of fact, we don't even know what complaints are there until a complainant comes to us and says, "I am not happy with the way the Office of the Ombudsman has concluded my case," or, "There is the lack of progress on my case." That's the only time we get involved, and only if the complainant wants us to get involved in some of the details do we do that. But I agree with you that there has to be total respect for the privacy of the workings of all the cases of the Office of the Ombudsman.

**The Chair:** Just to further what Mr Ramsay said for a point of clarification, even when a file comes before us, the name does not come before us. It's usually given a letter connotation, like Mr M or whatever, so we don't know the identity of the person.

Are there any further questions and/or comments?

**Ms Margaret H. Harrington (Niagara Falls):** Just a clarification on your statement here about public hospitals: You say, I think quite clearly, that if there's election of hospital boards, these would provide a range of ombudsmen for hospital clients—that is, an elected board—whereas you say then, in the absence of direct elections for hospital boards, the participation of the Ombudsman would be particularly welcomed. I just wonder if you could clarify that. You're saying that if changes are made so that there is an elected board, you would not see the Ombudsman involved?

**Mr Little:** No. I think a clarification is appropriate there. We are saying that where a service is a provincial service, where it's funded by the province and is a mandatory service, and with health care taking up the portion of the provincial budget that it does, the Ombudsman's jurisdiction is appropriate, and that it's especially so in the absence of those other ombudsmen who would be there if there were elected boards. But in the absence of that kind



of democratic representation for the public at hospitals, then the Ombudsman's jurisdiction is particularly welcome.

**Mr Mammoliti:** It may be off the wall, but that's just the type of guy I am. You're an expert, of course, in the field of grievance procedures and employee relations. You realize that the Ombudsman's office is not unionized. Do you think they should be? Do you think it would pose a problem within that office if the employees were able to unionize? Do you think that would pose some sort of problem in the relationship between the Ombudsman and the employees, or perhaps the office and ministries?

**Mr Upshaw:** I don't see that as a problem if they were unionized. I can draw your attention to a program called employee assistance program, where everything in that program is confidential, yet it's members going to members in confidence to talk about a problem they have. It's probably the most progressive joint venture that this government and our union have working together, and that's the employee assistance program. The people involved are management and bargaining unit people. I see no problem if the employees in the Ombudsman's department were organized. I don't see any conflict.

**Mr Mammoliti:** I've told you that in my opinion anyway there's a problem with communication within the office. Do you think that would improve communication between employees and the Ombudsman?

**Mr Upshaw:** It depends on the type of problem. When you say "problem with communication," that could mean almost anything. It could be a problem, but if they were unionized, maybe I could go in and straighten it out. For now, I can't. Or maybe one of our experts in labour-management relations could go in and straighten it out if they were organized.

**The Chair:** Mr Upshaw, Mr Little, I want to thank you for taking the time out of what I know is your busy schedule to appear before us this morning.

#### ONTARIO HOSPITAL ASSOCIATION

**The Chair:** The next group presenting is the Ontario Hospital Association. Good morning and welcome. Thank you for coming. You have as much time as I think you need to read your brief this morning, and I hope you'll leave some time for questions and/or comments from the members of the committee. When you're comfortable, can you please begin. There's water there. As you begin, can you both please state your name for the record, as I have not done so yet. Begin when you're ready.

**Mr Dennis Timbrell:** Thank you, Mr Chairman and members of the committee. My name is Dennis Timbrell. I'm the president of the Ontario Hospital Association. Joining me today for this presentation is Carolyn Shushelski. Carolyn is senior legal counsel for the Ontario Hospital Association.

I will, with your indulgence, read into the record a statement that summarizes our brief which is, notwithstanding your generous offer of unlimited time, far too long to read in its entirety, which will then leave, one hopes, more than ample time for discussion. We appreciate

this opportunity to speak to the committee today as part of the process of the review of the Ombudsman Act.

The Ontario Hospital Association is the collective voice of Ontario's 223 public hospitals. The association represents their needs and views to government, to outside organizations and to the public at large.

It is for this reason that we focus today particularly on one question, namely, whether the jurisdiction of the Ombudsman should be expanded to include public hospitals. We appreciate that this is only one of the issues brought forward in the recommendations of the committee's 1991 report, calling for a comprehensive review of both the act and the Office of the Ombudsman.

The current role of the Office of the Ombudsman is to investigate recommendations, decisions and actions or omissions in the administration of governmental organizations that affect individuals or groups.

Ontario's public hospitals are not governmental organizations, and it is the considered opinion of the OHA that they should remain outside the jurisdiction of the Ombudsman.

As I've said, there are 223 public hospitals in Ontario. The majority of these hospitals are independent corporations, incorporated as not-for-profit organizations under part III of the Corporations Act.

#### 1050

Each and every public hospital in Ontario is governed and managed by a board of directors elected primarily from the corporate membership, in accordance with the hospital's bylaws. The board is responsible for setting policies, while day-to-day operational management is delegated to a salaried administrator or chief executive officer. Directors serve on a voluntary basis and are directly or indirectly accountable to the Minister of Health, the corporation and the community.

Ownership is a function of the hospital corporation, which is comprised of members of the community, who usually pay a small membership fee or annual dues.

The issue of overview and jurisdiction, which is central to the present comprehensive review of the Ombudsman Act, is an important one for hospitals. There are in fact numerous statutes which provide for the investigation and review of a public hospital, including 22 listed in our full brief. Most notable, of course, among these statutes is the Public Hospitals Act.

The concurrent review of the Public Hospitals Act this year has been an effort to balance the ownership of public hospitals with enhanced openness and accountability of hospital boards. Under the Public Hospitals Act, the Lieutenant Governor in Council may appoint one or more persons to investigate and to report on the quality of management and administration of a hospital and the quality of the care and treatment that patients receive in a hospital.

If the results of such an investigation are disturbing, a hospital supervisor may be appointed to act in the best interests of the public, providing advice and guidance to the hospital's board and administration. This could focus on improving the quality of the management and administration of the hospital and/or the care and treatment of patients.

I would like to mention briefly the considerable review, complaint and approval procedures to which hospitals are



already subject as part of existing governance and management arrangements. Our written submission covers this in detail, and I commend it to you for your attention.

First and foremost, health professionals are committed to the provision of safe and effective care, in recognition and respect of individual needs and rights. Most hospitals have mechanisms for dealing with patient complaints. Some hospitals have gone so far as to implement a patient representative program, designating a person to act as intermediary between the patient and the hospital when needed as a quality assurance measure.

Beyond investigations under the authority of legislation, hospitals participate in a voluntary accreditation process through the Canadian Council on Health Facilities Accreditation. This program involves completing an extensive questionnaire and an onsite inspection by a team of independent surveyors. The resulting accreditation certificate is posted in public view, and the findings which accompany it provide the board of directors and staff with an assessment of the hospital's performance, including strengths and weaknesses.

In addition to statutes which provide various mechanisms for inspection of a hospital, there are also eight different methods by which members of the public can bring complaints against a hospital. Our written submission includes a brief description of these eight methods, but I would like to highlight two of the most common types.

First, perhaps the most frequent method of bringing a complaint against an institution and/or a health professional is through the legal system. Any person who believes that he or she has suffered injury or loss as a result of negligence can seek redress through the court system.

There are psychiatric facilities within 70 of the 223 public hospitals and there are also 10 psychiatric hospitals in the province. Both fall under the Mental Health Act, which contains extensive safeguards for patients and their rights. However, only the psychiatric hospitals are owned and operated by the crown, making them governmental institutions that do fall under the jurisdiction of the Ombudsman Act. The question, then, is whether that jurisdiction should be expanded.

Other channels for complaints about professional conduct include the Health Disciplines Act and the regulated health professions legislation. These provide avenues for complaints either to existing professional regulatory bodies or to those that will be established under the Regulated Health Professions Act, which is expected to become law shortly.

While this complaint mechanism will apply to specific actions of health professionals, the complaint could certainly apply to an incident that took place in a hospital setting.

Patients are not the only ones who can bring complaints against a hospital. Employees have a variety of mechanisms for taking action, ranging from grievances to legal actions or complaints under the Human Rights Code. The Occupational Health and Safety Act requires hospitals to have joint health and safety committees and provides unrestricted access to hospital premises for Ministry of Labour inspectors. Other legislative initiatives include proposed amendments to the Pay Equity Act and the proposed Employment Equity Act, which will provide additional avenues for employees to pursue recourse for perceived

wrongdoings in certain circumstances. Members of the medical staff, health professionals to whom the hospital board has granted certain privileges for their practice, also have opportunities to bring complaints against the hospital through means identified more fully in our written brief.

As you will know, the standing committee on administration of justice has just completed a clause-by-clause review of the package of legislation concerning advocacy, consent to treatment and substitute decision-making, and the purpose of this legislation is to provide enhanced protection for the rights of patients.

As you can see from this brief outline, hospitals are already subject to a great deal of review and scrutiny, which brings us back to the question of whether or not hospitals should be subject to the authority of the Ombudsman Act. While acknowledging the rationale of the act, namely, public concerns about government administration, we believe that hospitals are outside that mandate. Furthermore, it is the view of the OHA that the many existing avenues for complaints from the public, patients, employees and medical staff make it redundant for hospitals to be considered to be subject to the Ombudsman Act.

**The Chair:** Thank you very much for that fine presentation. Questions and or comments?

**Ms Harrington:** I have a couple of questions. First of all, welcome back to this building.

**Mr Timbrell:** Thank you. It looks familiar.

**Ms Harrington:** On page 7, you mention that the accreditation process is voluntary. Are there hospitals that do not take part in this accreditation process?

**Mr Timbrell:** None that I'm aware of at this time. There have been some concerns expressed in recent years about the costs involved in preparing for and going through the process, because it's a very, very exhaustive process, but at this stage, I'm not aware of any that have pulled out of that.

**Ms Harrington:** So it is pretty well a blanket—

**Mr Timbrell:** I might add, by the way, that the Canadian Council on Health Facilities Accreditation made a decision within the last year or two to consider granting a four-year accreditation. Until now, if you were accredited, you got a three-, two- or one-year accreditation; most hospitals have three-year certificates. For the first time anywhere in Canada, a hospital in Ontario was granted a four-year accreditation about a month ago, and that's the Mount Sinai Hospital, only minutes away from where we're sitting.

**Ms Harrington:** That would certainly cut down some of the costs of administering that program.

**Mr Timbrell:** If you'd had a chance to sit in on some of the sessions at our recent convention, I can tell you that everybody in the system has refocused all their efforts on quality issues, particularly in light of the fiscal environment in which we're operating. Whether it's the board or the medical advisory committees or other standing committees of the board, everyone has focused almost single-mindedly on the issue of the maintenance of quality, and



how to maintain or enhance quality in the light of diminished fiscal resources.

**Ms Harrington:** It certainly is an important consideration.

**Mr Timbrell:** Yes, it is.

**Ms Harrington:** You also mentioned that directors who serve on a voluntary basis on a hospital board are directly or indirectly accountable to the Minister of Health. From that, you go into some detail about the different interactions between the ministry and the actual care provided. In that direct or indirect accountability to the minister, is there any way in which the minister could remove a board member or a board and say "This was not appropriate"?

**Mr Timbrell:** Under amendments I introduced in 1981, the minister does have the authority to send inspectors in—I alluded to that in the presentation—and, depending on the results of the inspectors' report, to put in a supervisor. That arose out of a situation at the Toronto East General Hospital in 1981. So the minister does have the authority to move directly into a hospital.

What the minister does regularly is that each year a number of hospitals are subjected to what are called operational reviews, which involve independent consultants, or they might involve teams of people drawn from other hospitals. In that regard, more and more turn to our association to assist them.

The purpose of those reviews is to either zero in on a particular program where there are problems—it might be to do with overruns in spending or it might be concerns about the relationship of one hospital's dialysis program, for example, to the regional issues, and that may have got to the point where they want some outside advice—or it may be an overall review. Those reports then form the basis of the measures which the government then pursues with the hospital.

1100

The most recent example I would cite would be at Huntsville. There was an operational review carried out. The government is working through, with the board, the development of corrective measures and actions in response to the issues highlighted by the person who conducted that review for them.

**Ms Harrington:** Just in closing, I'd like to mention that in certain regions, obviously, we're going through that process of trying to work together with other hospitals in the area to consolidate services. That's a very important process. I represent the city of Niagara Falls, and we have an excellent hospital operation there.

**Mr Timbrell:** In fact, are you not a former member of the board?

**Ms Harrington:** Yes. How did you know?

**Mr Timbrell:** You'd be amazed what I know.

That's a good example. The district health council is meeting today, as a matter of fact, with the hospitals in Niagara. They've developed their own package of proposals, which we're going to review later today and, hopefully, later this week with the ministry, on how to deal with the operational planning process so it doesn't become

overbureaucratized and cumbersome for the health councils and the hospitals.

**Ms Harrington:** Also, a week ago the district health council met with all the local area MPPs to explain hospital workings.

**Mr Timbrell:** Yes, I was aware of that.

**Ms Harrington:** We appreciate the contact.

**Mr Miclash:** Just a statement. Dennis, I thank you for your presentation. You're speaking to a good number of former board members on this committee, actually, and I don't think we have to be convinced of the number of avenues that are open to both employees and people making use of services in the hospital. I think you've just put it very precisely and directly as to the number of services available, and I thank you for that.

**Mr Timbrell:** Thank you.

**Mr Ramsay:** Welcome, Mr Timbrell; nice to see you again. You're around a lot, keeping all of us from all the parties informed on the doings of the Ontario Hospital Association, and we certainly appreciate that information.

From the presentation you gave today, to me it's very obvious that hospitals in Ontario are very well regulated; one may say overregulated. But certainly hospitals have to be consistent to the various acts and regulations that are applied to them. It's very rigid in Ontario, and I think from that we derive very good service.

I'm not one to suggest that we should be expanding the Ombudsman's jurisdiction in Ontario. If there were a need for some sort of overseer for the hospitals, I would suggest that it should not come from the Ombudsman of Ontario, but someday, if the Ontario Hospital Association felt it necessary, maybe it would establish its own Ombudsman or something like that, sort of like what newspapers do etc. But I certainly would not propose that we expand the mandate of the Ombudsman of Ontario, who I feel really has the jurisdiction to look at direct government goings-on, and that's the person the people of Ontario go to.

I was wondering if it would be possible for you to put on a past hat of yours to maybe give us some insight. As we all know, you were in government, and my recollection is that you were in government specifically at the time when the act we're reviewing today was brought into being. I would really appreciate getting any insights you have about the birth of this act and any recommendations you might have for us as a private citizen, but one who has some knowledge of how this all came into being in the first place.

**Mr Timbrell:** You're quite correct: I was at the cabinet table when this was discussed in the mid-1970s and when we put it through the House. This followed a complete review of the overall government organization known as the the COGP, committee on government productivity, which Jim Fleck headed up on behalf of the government. Having reorganized the government in the late 1960s, early 1970s, the period I'm referring to, as you appreciate, the size of the government and the scope of the government was growing quite remarkably every year.

My first year in cabinet, for example, in 1974, the provincial budget included a 25% increase in government spending, which embraced the introduction of a whole



host of new programs including the drug benefit program, for example, which was introduced in that budget.

We were conscious, talking with people like Alan Borovoy and others from not just the civil libertarian groups but other consumer groups, that as the government presence in the province and its impact on the lives and livelihoods of individual citizens was growing, there needed to be some independent buffer, if you will, arbiter, to call us up short where that was appropriate.

In the design of the legislation of the program, it was never intended that the Ombudsman would become a one-person legislature, so independent of the elected representatives that that person could ignore the wishes of the Legislature or act in a way or manner which in itself might be offensive to due process, natural justice, whatever. That's why this committee was struck. That's why it was envisaged in the beginning that ministers would have to come to the committee on occasion to justify why they had not accepted the recommendations and what they had done instead of or in spite of the Ombudsman's recommendations. But equally, it was intended all along that the Ombudsman would be accountable to the Assembly, because the Ombudsman is appointed by the Assembly, under the terms of that legislation, through this committee.

**Mr Ramsay:** I think what we're really trying to grapple with here too is the appearance of the two conflicting principles of independence and accountability, and how we marry the two. I think that's what we're grappling with, and how I would see sorting those principles out is that we obviously must have respect for the independence of decision-making in regard to the Office of the Ombudsman. At the same time, I think there has to be accountability of financial management and also of process, to make sure that for all that money—the \$9.5 million that's spent every year by that office—the people of Ontario are receiving good value. I just wonder if you'd have any comments on balancing those two principles.

**Mr Timbrell:** Well, there is one more important principle and it's why the legislation was structured the way it was; that is, that Parliament is all powerful. It was never even envisaged, never even considered, that the Ombudsman would be appointed by order in council or some other administrative fiat of the executive council. The legislation is very clear that the Ombudsman is a servant of the Assembly and therefore a servant of every member of the Assembly and therefore a servant of every citizen of the province, and therefore must be accountable to the Assembly. That one principle, the supremacy of Parliament, must never be lost sight of.

**Mr Mammoliti:** If you don't mind, I just want to mention the acts, once more for the record, that pertain to hospitals and that hospitals are regulated under. The Corporations Act you've mentioned, the Public Hospitals Act, the Mental Health Act, the Human Rights Code, the Health Disciplines Act, the Occupational Health and Safety Act, the Pay Equity Act, the Employment Equity Act. Which would supersede which, and, if we brought in the Ombudsman Act, would that supersede all of them?

I agree with Mr Ramsay. I think the employees and the people who work in hospitals have got to at present account for everything they do and every decision they make. There's got to be forms filled out and there's got to be questions asked. At present, when I talk to nurses and when I talk to some doctors and when I talk to even the clerks in lobbies, they're always having to worry about these things.

I just wanted to put on the record that I agree, that I don't think we should be expanding, that you're already accountable for so many things and decisions that you make every day and that I agree with you. That's the comment I wanted to make, Mr Chair.

1110

**Mr Timbrell:** I appreciate that. I might say that in the course of this day, the hospitals of Ontario will probably see and serve over 100,000 people. There are perhaps 35,000 to 40,000 who are in hospital beds today and that many more again who will come through outpatient clinics, emergency departments, visits to physicians whose offices are located in the building. Everybody involved in the hospitals understands very well just the sheer magnitude of the responsibilities which they carry for dealing with that many people on a daily basis.

**Mr Carr:** Thank you very much for your presentation, Dennis. I want to say right off the bat that the question I've got may sound political but I don't mean it to be, particularly for the other side.

**Mr Timbrell:** I'm apolitical myself.

**Mr Carr:** The funding issues we face would be there whether the Conservatives were in, or the Liberals or so on. In part of my riding, Burlington, Joseph Brant Hospital is facing some major problems, and I think from the average person's standpoint, there is more chance that he or she won't have the services there when they're needed in our hospitals because of funding issues than it is because the hospitals aren't being run properly or the quality of care isn't there.

As we sit here today, would you say that to be a fair statement, that the real pressures don't relate to the quality of our hospital management, or the nurses or the doctors or the workers, but that it really more than anything else is a funding issue that could threaten our hospital system?

**Mr Timbrell:** Well, the big concern of any hospital is ensuring that the services the people of the community need are available when they need them. Now having said that, hospitals more and more recognize that the patterns established 25 or 30 years ago, where hospitals attempted to be all things to all people—those days are over. It more and more means that hospitals are having to look to ways to sort out their programs in relationship to the other hospitals in their area and, wherever possible, to acknowledge that they maybe have to give up doing certain things, so that another hospital in the region will do it, but that they may be able to take on a broader responsibility for other services; in other words, that there be movement of programs and responsibility for them back and forth.

That's a little bit easier in a community like yours, where you have three hospitals within half an hour of one



another. Not quite so easy in Kenora, where it's a two- or two-and-a-half-hour drive to the next hospital, in Fort Frances or in Dryden or whatever.

We have, I think, acquitted ourselves within the hospital system extremely well in this last year in that, with a relatively small increase in funding, the hospitals of Ontario, the boards and the administration, working with their unions, working with staff, working with the professions, have mounted a monumental effort to maintain the quality in the face of reduced funding.

But there's no question that we're looking to next year with some apprehension. We have a promise of a 2% increase in funding and, I have to tell you, we're banking on that promise. We are banking on that promise and we've given the government our commitment that we will live with that, whatever happens with arbitration awards and other cost increases. If that were to be taken away, then yes, it will throw 223 boards, 223 management groups, 223 communities back to the drawing board, and the concern about access to needed services will be heightened.

**Mr Carr:** Some people would lead us to believe that if you just had the Ombudsman identifying the problems, everything would go away. I don't believe that's the case. I think the boards, the Ministry of Health, know what the problems are, and that it really comes down to a case of the whole funding and the economic issues.

But specifically on something you mentioned, you said there are some stats on operational reviews. Maybe you could give us some idea of the numbers that were recorded last year and what the reasons were. In other words—and I know it's probably difficult to do in a short space of time—were the problems related to bad management on the boards' parts, as they may be in some of them? Is it staffing issues, not having enough people? Of those stats on the operational reviews, maybe you could just tell us, ballpark, how many there were and what specifically they were about.

**Mr Timbrell:** My recollection is a little vague, but my recollection is that in the last year there were perhaps 10 or 12 ORs, as we call them, operational reviews, done. They did highlight, in some instances, issues pertaining to communication within facilities among the board and management and staff. In some instances they highlighted some concerns about the way certain programs or departments are organized, and some of that had to do with just straight management issues and in other instances had to do with the relationship of a program to similar programs within the region, the kinds of things I was alluding to when I answered your question about Joe Brant. But in none of those operational reviews did—well, sorry, I shouldn't say none. There was one.

**Mr Carr:** Big one.

**Mr Timbrell:** One beaut at St Michael's Hospital—

**Mr Carr:** Yes, which everybody refers to.

**Mr Timbrell:** —which I guess I put in a different category from the other operational reviews. That one certainly did highlight some major concerns that everybody in the industry has certainly taken to heart, about the role of the boards, the communication with management, the role

of the ministry. That review, in fact, found fault with everybody, from the ministry to the board, to the administration, to the owners of the hospital, and it was one of those cases that will, I think, go down in the history of the evolution of our system in Ontario as a very significant development, one from which everybody has learned to improve.

**Mr Carr:** I agree, and what happens with the cases like that, of the 223 operating, one has a major problem and we turn around and try to change things based on that.

Some would say, "Well, if we just had the Ombudsman, we could have prevented that one earlier." I don't believe that is the case. I honestly believe that the procedures in place right now—and this is giving credit to the ministry. The Ministry of Health does a good job in its function of monitoring hospitals. Would you agree that the ministry does do a reasonably good job in terms of its responsibility of overseeing what happens at our hospitals?

**Mr Timbrell:** I do. I think it could be better, and in that regard the ministry and we at the OHA have now launched a joint initiative called the joint policy and planning committee, or JPPC, which is a body through which we are collaborating in the development of policies and directives to hospitals. That should, if anything, make hospitals and the ministry much stronger partners than they've been in the past.

**Mr Carr:** The problem you've got with this is you've got an Ombudsman's office that is dealing with different problems. As I get approached by whether it's hospitals or individuals or doctors or nurses, they're talking about some of the problems in the health care. It is very technical and very difficult when they come up and tell you what some of the problems are. What I see is, one of the major concerns with the Ombudsman's office is that it's taking such a broad issue that the people who really can take a look at what the problems are are the people who do it in the Ministry of Health, because it is very specialized in looking at it.

I guess one of the big concerns, the way some people see the Ombudsman, is, this is the person who is the court of last resort, who can oversee everything if the ministries, whatever they are, aren't performing, if the legislatures aren't performing. What would you like to see as the final decision? Would it be the Ministry of Health over hospitals, or is there some role that the Ombudsman could play?

1120

**Mr Timbrell:** I don't see any role for the Ombudsman. It's clear in the legislation that the ultimate responsibility rests with the minister for the direction of the health care system of the province.

You must understand too that, as I pointed out in my statement, hospitals are not crown-owned assets. That only happens in New Brunswick now. They are owned by the community, perhaps by a religious order, perhaps by a civic body such as in Ottawa, North Bay, Sarnia, elsewhere, or, if not, then by a not-for-profit body incorporated under the Corporations Act for the purposes of, initially, the development and then the operation of a hospital.

It is, if you will, a form of a purchase and sale of services. The government said years ago, "We're going to



fund these services, and we're going to buy them from you in these 223 hospitals." Over the years that has evolved into, sometimes, concerns about the way the services were provided. You know, "That isn't what we meant to buy," or "That isn't the way we meant to have it delivered." That's become a very complicated science in itself: How to review the operations of hospitals and make sure that you're getting value for money and that what's being done in one hospital is appropriate relative to the other hospitals in the whole system.

In fact, I meant to point out, partly in answer to a question Mr Ramsay asked when he suggested maybe the OHA would eventually set up some kind of a monitoring body, when the government of Ontario, 35 years ago, decided to establish a hospital insurance plan, the OHA set it up for them. We seconded over 200 staff to the provincial government, sold them land and a building in which to establish the Hospital Services Commission, and the first head of the Hospital Services Commission had previously been—no, that's not true; the second head—a president of the OHA. We've been deeply involved as an association and as individuals members in the evolution of the system, but clearly, on the understanding that we are providing a service on a not-for-profit basis that the government is buying from us.

**Mr Carr:** One last question. This one might not be fair because it sort of goes outside your responsibilities with the Ontario Hospital Association, but everybody knows that you do have a background. I agree with you that the ultimate authority should be with the elected officials. As you know, we've been in a bit of a battle over that and trying to get the delicate balance. You may have followed it, because it has been in the newspapers. If you were in our position as legislator, knowing the circumstances, what would you recommend we do with regard to the Ombudsman and this whole situation that we're facing now. I don't mean to put you on the spot—

**Mr Mammoliti:** Put him on the spot.

**Mr Carr:** —but as a former politician, I guess you're used to it.

**Mr Timbrell:** I was trying also to reference that point in my remarks earlier about how the legislation was originally crafted and why it was crafted the way it was; that is, I would say to the Ombudsman, I would say to any other official: "Parliament is supreme. If Parliament, through one of its committees, wants to meet with you, wants to ask you questions, then you come and you answer."

**Ms Christel Haeck (St Catharines-Brock):** I've had a chance, as the discussions have gone on, to review your larger document. While it is longer, it is quite cogent, and I think would make it clear to all of us the range of restraints and constrictions and whatever that you function under. The legislation you've listed at the back which controls the professions as well as the hospitals I think is quite illuminating, the depth and breadth of it.

Having said that, however, I have in my role as MPP run into a constituent who was seriously distressed; in fact, was seriously considering suing two medical institutions within the peninsula regarding care.

**Mr Timbrell:** Is that medical institutions or hospitals?

**Ms Haeck:** Both of them are hospitals. In fact, the constituent after some thought decided not to.

On page 14 of your larger document you refer to the possibility of legal action, which I think we are all clear would be fairly expensive for most individuals. Then on page 18 you talk about the public relations and patient representative programs and some of the guidelines under which these particular programs may be set up.

They mirror some of the kinds of issues which the Ombudsman does investigate, things like: "to facilitate the complaint resolution process;" "to interpret hospital policies and procedures and to direct patients to appropriate services and resources." In my time on this committee, we've had a chance to listen to Justice Morand, who was a former Ombudsman. One of the comments he made is that members of the public who tend to come to the Ombudsman are not looking for justice, they're looking for mercy. I thought that was also rather instructive, how he, as a former Ombudsman, definitely viewed this as a court of last resort.

The Ombudsman looks at timeliness, looks at whether there are policies and procedures to deal with complaints. Given the fact that even though you have these public relations programs available in hospitals, but that patients, patients who are not necessarily in good financial circumstances, may feel at times that in some respects their particular complaints aren't being seen to in a timely fashion or that there may not be adequate procedures to deal with their particular complaints, would you see that this might be an area for the Ombudsman to play a role?

**Mr Timbrell:** No, because the Ombudsman, with all due respect to the present incumbent, her predecessors and her successors, knows nothing about the practice of nursing, medicine, physiotherapy and on and on. The people within the hospital boards and the administration are either trained to deal with those issues or have taken the time and made the commitment to become involved as members of, first, the hospital corporations and the committees and, ultimately, the board, to educate themselves.

I wish I could say that every hospital were doing this; they aren't. In most cases, virtually every case, it wouldn't be because they're not conscious of this. In many cases, it's the administrator who ends up doing this, it isn't a staff person, because for budget reasons they simply can't afford to have a person designated to do this and only this, so the CEO does it.

I was reminded this morning of a CEO of a small-to-medium-sized hospital east of Toronto whose policy it is to take all correspondence from patients, good or bad, to the board. The board meets in an open session, although I suppose they're careful to protect the anonymity of both the practitioners and the staff and the patients.

As we're reviewing with the government the provisions for the Public Hospitals Act, I think this is probably going to be one area, as quality assurance has been highlighted by both sides in the discussion as something that merits consideration as we look at the development of new legislation, where we may want to consider certain guidelines



that would be issued for all hospitals to follow. Again, you've got 4,000 hospital trustees who for the most part see themselves as ombudspeople, if you will, and that's even more pronounced in smaller communities; I'm sure in Mrs Harrington's case people knew she was on the board, and she probably heard about it from people at various times in her daily activities. I certainly hear that from people all the time, that they're well known in the community as members of the board and therefore they get called on to advise and assist in redressing issues. But it's an area that we properly should look at, with respect to the Public Hospitals Act, for guidelines.

1130

**Ms Haeck:** By virtue of the fact that I've been involved in my community, I guess I'm a little more aware of who sits on my hospital boards. But as a private citizen, prior to about 12 years ago, for the most part I had no idea who was sitting on my public hospital boards. Realistically, in my riding I have four hospitals, and by virtue of my job these days I do encounter these folks on a more regular basis, but I would say the average citizen, John and Joan Q. Public, do not know who's on their hospital board and, in fact, in most instances would probably just be dealing with the administrator in terms of dealing with whatever concern they may have.

I have sat on a few boards myself, and I understand that we do end up trying to arbitrate or mediate various concerns, but I would suggest to you that the kind of review the Public Hospitals Act is undergoing, making the boards a bit more visible maybe in the community, to provide access for the larger community to those boards and possibly expanding their role as far as arbitration and mediation are concerned, I think is highly appropriate and important.

My question about the role of the Ombudsman is one that this one constituent really made quite clear to me. The description of various administrators basically coming to him, as a senior citizen, begging him not to institute a legal suit was one that really was quite—well, it was a very negative image. I guess the other thing is that he does have enough money to do this, but he decided in the end that it wouldn't serve any useful purpose. He had his health back and he was prepared to enjoy that.

**Mr Timbrell:** I'm sure you realize that there are always at least two sides to every story, sometimes three.

**Ms Haeck:** I understand that. But realizing that Niagara-on-the-Lake is made up of people who may not be as well heeled, what are the options if there aren't the appropriate mechanisms to deal with some of those complaints out there?

**Mr Timbrell:** I'm sure you must have asked yourself the question that if you were to entertain the notion that you will expand the role of the Ombudsman to cover anything and everything funded by the provincial government, then it is also going to be looking at the Shaw Festival at some point. They're also going to be looking at other cultural programs. Where do you draw the line?

**Ms Haeck:** I understand your point. I guess it's a general perception of the kind of gut-wrenching issues out

there. Health is one that really hits everyone—not to suggest that the Shaw Festival isn't an important cultural industry: As the representative from that area, I would say it keeps a lot of my constituents employed and definitely provides a great economic boon to the town of Niagara-on-the-Lake and the Niagara region. But health care really cuts across every community, and it is the thing that not only you heard about when you were an elected official but all of us hear about on a regular basis, and they're usually very heart-rending situations.

**Mr Timbrell:** We're very conscious of that. You may know that, for example, at convention last week, the members present unanimously passed a resolution calling on our association to develop guidelines to help all hospitals to institute open board meetings, to remove any barriers, if they exist or where they exist, to membership in the hospital corporations, and to build on the existing base of accountability and links of hospitals to the community, to strengthen that and to open the process.

At the end of the day, though, if somebody has what they feel is a legitimate complaint and if they've exhausted all the processes through administrators and others, and if they still decide that they want to pursue it either to the appropriate college—the college of nurses, the college of physicians, the college of midwifery, whatever it might be—or to the courts, then that of course is their right, and then other mechanisms kick in, including legal aid and other means of assisting those who are not in a position to personally afford to pursue their rights.

**Ms Haeck:** I appreciate your comments, and while I understand some of the complaints out there, I personally wouldn't support putting hospitals under the umbrella of the Ombudsman at this point. But I also feel I have to ask the question, because there is a concern out there among some constituents we've heard from, and I have a very tangible case from my office.

**Mr Timbrell:** I suppose the two committees that most trustees rely on most heavily and for which there are lots of volunteers are the quality assurance committees of boards and the finance committees, because they recognize that they do go together.

**The Chair:** Any further questions and/or comments? Seeing none, I want to thank you both for appearing before us this morning. I can only start to imagine how strenuous your schedule is, so I really do want to thank you for taking the time out.

**Mr Timbrell:** A pleasure. Thank you.

**The Chair:** Next week, November 11, this committee will not be meeting, as it is Remembrance Day. But the following Wednesday morning, November 18, at 10 am, we have appearing before us the Law Society of Upper Canada; at 10:30 the Ontario Public School Boards Association, and at 11 am the Ontario Home Warranty Program.

This committee now stands adjourned until November 18.

The committee adjourned at 1137.









## CONTENTS

Wednesday 4 November 1992

<b>Review of Office of the Ombudsman</b> . . . . .	B-147
Ontario Public Service Employees Union . . . . .	B-147
Fred Upshaw, president	
Tim Little, legislative liaison	
Ontario Hospital Association . . . . .	B-151
Dennis Timbrell, president	

### STANDING COMMITTEE ON THE OMBUDSMAN

- \***Chair / Président:** Morrow, Mark (Wentworth East/-Est ND)
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- Murdoch, Bill (Grey PC)
- Perruzza, Anthony (Downsview ND)
- \*Ramsay, David (Timiskaming L)
- Witmer, Elizabeth (Waterloo North/-Nord PC)

#### **Substitutions / Membres remplaçants:**

- \*Abel, Donald (Wentworth North/-Nord ND) for Mr Duignan
- \*Carr, Gary (Oakville South/-Sud PC) for Mr Murdoch
- \*Harrington, Margaret H. (Niagara Falls ND) for Mr Perruzza
- \*Mammoliti, George (Yorkview ND) for Mr Johnson

\*In attendance / présents

**Clerk / Greffier:** Carrozza, Franco

**Staff / Personnel:** McNaught, Andrew, legislative counsel and research officer, Legislative Research Service

CA2 on  
XC99  
- 153

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B-12

B-12

ISSN 1180-4300

## Legislative Assembly of Ontario

Second session, 35th Parliament

# Official Report of Debates (Hansard)

Wednesday 18 November 1992

## Standing committee on the Ombudsman

Review of Office  
of the Ombudsman

Chair: Mark Morrow  
Clerk: Franco Carrozza

Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

# Journal des débats (Hansard)

Mercredi 18 novembre 1992

## Comité permanent de l'ombudsman

Examen du Bureau  
de l'ombudsman

Président : Mark Morrow  
Greffier : Franco Carrozza

Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron







### **Table of Contents**

Table of Contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

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La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday 18 November 1992

The committee met at 1012 in room 151.

### REVIEW OF OFFICE OF THE OMBUDSMAN

**The Vice-Chair (Ms Christel Haeck):** Ladies and gentlemen, I think we will begin. Thank you, Law Society of Upper Canada, for being very timely on a bad-weather day. I hope that the members of your delegation will introduce themselves so that we will have a record of it for Hansard. I believe you, Mr Rock, are the treasurer or the president, if you would introduce your committee.

### LAW SOCIETY OF UPPER CANADA

**Mr Allan Rock:** I'll be happy to. May I introduce myself. My name is Allan Rock. I'm a lawyer practising here in Toronto. It's my privilege to serve as treasurer of the law society this year. "Treasurer" is the name of the position; it's the president or chief executive officer of the law society. It's an elected position. I'm elected by other benchers, whose role I'll describe in a few moments.

On my left is the undertreasurer, Donald Crosbie. The undertreasurer is a full-time staff position, the chief operating officer of the law society. On my right is Paul Lamek, a lawyer practising here in Toronto, an elected bencher serving this year as chair of the legal education committee of the law society, and on his right is Richard Tinsley, who's the secretary of the law society, again a full-time staff position. Don and Richard are the two senior staff people of the society.

May I say at the outset how grateful we are to you, Madam Chair, and to the committee for this opportunity to speak to this matter which is of significance to the law society. We propose to address primarily, in the time allotted to us this morning, the question put in the letter from the committee this past July with respect to the prospect of extending the jurisdiction of the Ombudsman to include the law society, as, for example, that one might complain to the Ombudsman arising from the disposition of a discipline matter.

I should point out that we have filed this morning with the committee a written submission which develops our position at greater length than time permits in the oral presentation. I respectfully invite the committee's attention to that written submission, which we have prepared in order to express our position in relation to the question the committee's put.

May I begin by providing just an overview of our position before inviting any questions the committee has. If I may ask the committee to look at the last page of our written submission, page 22, we have there set out our conclusions. I'd like to make my brief oral presentation in reference to those conclusions, if I may, and begin by suggesting that the jurisdiction of the Ombudsman should not be expanded to include any decisions of the law society,

fundamentally because the law society is not a governmental organization.

Of course, a governmental organization can be defined by a change to the statute to include anything the Legislature wishes to include, but it's fundamental to our position that, as the statute now stands, the Ombudsman was intended as a recourse for those aggrieved by decisions of governmental organizations, including agencies of government, and the Ombudsman's reach ought not to be extended to private organizations or organizations with a public responsibility that are other than government organizations.

May I develop that point by inviting you to consider with me for a few moments the nature of the law society as it has developed over extended periods of time and as it's reflected in the present Law Society Act.

The law society in 1997 will celebrate its 200th anniversary; it was formed in 1797. It was incorporated in 1822 by act of the Legislature that we might acquire the land at Queen and University which is where Osgoode Hall now sits.

The law society is governed by persons elected by the profession called benchers after the old English tradition. The benchers sit in convocation and convocation is presided over by the treasurer, again after the old English tradition from the Inns of Court. But it's not just the 40 elected lawyers who govern the profession. There are important features of the profession's government that are relevant to this morning's discussion.

In the first place, as a result of an initiative taken by the benchers themselves there is lay involvement in the government of the law society. The statute now provides for the appointment by the Lieutenant Governor in Council of four non-lawyers who serve as benchers with full rights in convocation to provide a public participation in the affairs of the law society.

Those lay benchers sit on our committees, decide matters of discipline, participate in setting standards and work with us towards establishing the policies of the law society in the government of the profession in the public interest. Those lay benchers also have an important role in dealing with complaints. I'll deal with that more fully in a few moments.

The other aspect of the law society's government which I wish to emphasize for the purposes of this morning's presentation is the involvement of the Attorney General as a bencher of the law society.

Subsection 13(1) of the Law Society Act provides that the Attorney General is the guardian of the public interest in respect of the legal profession. It provides that the Attorney General is a bencher of the law society with full rights of other benchers; that the Attorney General may, in respect of any decision or step taken by the law society, call for the production of documents and make such investigations as



may be required in order to ensure that the public interest is safeguarded.

The role of the Attorney General as an active benchers: The involvement of lay benchers as participants in our government, in my submission, establishes that there is already significant and very effective public involvement and accountability on the part of the law society as it governs the profession in the public interest.

I'm making the point that we're not a governmental organization and therefore it's inappropriate to extend the Ombudsman's jurisdiction to us, but that in the manner of our government of the profession, there's a public involvement. Indeed there's government involvement through the status of the Attorney General to ensure that we're accountable, both to the public and the government, and that our processes are open to that review.

May I point out as well that there is a public aspect to everything we do. Our convocations are held in public, our discipline proceedings are held in public and our reports are available and are given to the press and interested members of the public at all times, so there is clearly an opportunity for those who wish to know about what we're doing to get information.

The regulation-making power conferred upon us by the Law Society Act is subject to the approval of the Lieutenant Governor in Council. We, of course, cannot act alone.

So in structure and in practice there are crucial links between the society, the government and the public, but we are not a governmental organization.

#### 1020

Let me turn to the next point made in the summary of our conclusions on page 22 of the written report, which is article 6.1.2: "There is no evidence of public need that justifies expanding the jurisdiction of the Ombudsman to include the law society." We respectfully ask you to conclude with us that the system in place at present at the law society is sufficient to meet the public need for accountability and responsiveness when there are complaints about the way that lawyers practise or misdeeds that lawyers may do.

Let me deal first with complaints. In 1986 we worked with Eleanor Meslin, who was then an officer in the Ombudsman's office, to develop a mechanism for dealing with complaints against lawyers from the public in a fashion that would meet the rigorous standards that are appropriate to a self-governing profession.

Working with her, we developed a mechanism by which complaints are received and assessed by the staff, and if they're not going to be acted upon—that is to say, if the staff decide after investigating the matter that the complaint is unfounded—the complainant member of the public would have the right to a review of that decision by a lay benchers and the lay benchers, sitting as a complaints commissioner, would have the final decision whether the complaint should indeed be dismissed or whether it should be passed on with a recommendation for further action to the chair of discipline or other officers of the law society. When the lay benchers sits as a complaints commissioner to perform that function, that person has independent counsel

and operates independently of elected benchers in performing the function.

May I point out as well that in terms of meeting the public need for accountability we have mandatory liability insurance for errors and omissions. The lawyers have themselves, through their contributions, funded a compensation fund, which now has over \$32 million in it, to meet claims from clients who lose money because of dishonesty on the part of lawyers.

We have public information initiatives, such as Dial-A-Law, which is a toll-free number that's available to residents of Ontario throughout the province and by which they may gain access to recorded tapes explaining different areas of law in a very capsulated form, including a tape on how to complain about your lawyer.

We have 41 full-time staff at the law society, at an annual cost of approximately \$2.5 million, dealing with discipline and complaints matters.

In all, it's our respectful submission that it cannot be demonstrated that there's a need to add to the systems now in place an additional layer of recourse through the Ombudsman, because complainants, members of the public, who feel aggrieved already have effective ways of taking action.

Let me pass quickly to 6.1.3 in the list of conclusions, which deals with the public policy aspect of this matter. It's our submission to the committee that the overriding consideration in this analysis must be the need ultimately for an independent legal profession. It's the task of the lawyer to stand for the citizen when matters of property or person or rights are at issue, not only in private disputes but particularly and perhaps pre-eminently when there are controversies between the citizen and the state.

It's fundamental to our position on this issue, as in so much else, that lawyers and the law society must have that independence not only in perception but in reality that would permit us, if the case required it, to stand against the state.

The extension of the Ombudsman's jurisdiction to decisions of the law society would mean ultimately that the law society—lawyers—on matters of discipline or complaints or standards would be answerable to the government, to the Legislature, a result which, in our respectful view, is fundamentally inconsistent with what should be the paramount principle of the independence of the bar.

I say these things not out of mere form, not merely because they serve my present purpose; I refer to these principles because they are fundamental, enduring. Indeed, in 1980 when the professional organizations committee completed its landmark report on the professions, in passages that are referred to and quoted in our written submission it restates those principles in the strongest possible terms and return to them in making recommendations and prescribing guidelines for the governance of professions in Ontario. I say those principles ought not to be overlooked as this committee considers whether it's appropriate to extend the jurisdiction of the Ombudsman to matters affecting the law society.

Last, may I come to a conclusion by pointing out, as we do in paragraph 6.1.4, that we are on the threshold of changes in the Law Society Act, if the government accedes



to requests we will shortly make of it, that will strengthen the position of the law society in three important respects: first, the establishment and enforcement of standards by which lawyers should practise in Ontario; second, dealing with complaints from members of the public about the conduct of lawyers; and third, dealing with the process of disciplining lawyers if we have allegations of misconduct against them.

That package, the proposed legislative reform, arises from years of work that we've done, commencing in about 1987, re-evaluating our standards, our complaints and our discipline processes. It's been a public process. We've involved members of the public as we've prepared the reforms. They are now being drafted in legislative terms by our consultants and we will submit them to the government, as I've mentioned to the Attorney General and the Deputy Attorney General, within the next 12 months.

These changes, which we refer to in more detail in our written submission, contemplate among other things the appointment of a complaints commissioner by government, the Attorney General, the public and the law society, so that the three stakeholders, if I may, are involved in the process of appointing the complaints commissioner, who would then ultimately determine the disposition of complaints against lawyers.

I don't wish to go over time. That's a summary of our position, a summary of the reasons why we suggest that it would be inappropriate, unnecessary and inconsistent with important principle to extend the jurisdiction of the Ombudsman to the law society.

My colleagues and I will be happy to receive your questions. I've invited them, if I may, to offer any answers that occur to them to questions that are put. Once again, I thank you for this opportunity this morning to make these representations.

**The Chair (Mr Mark Morrow):** Thank you very much. Any comments and/or questions?

**Mr Bill Murdoch (Grey):** First, I just want to apologize for being late, but I was in another meeting. I guess, Mark, you were looking for me too, trying to find me.

I'm sorry I was late and missed some of your presentation, but I take it that, quite strongly, you don't want us to put you under the jurisdiction of the Ombudsman. I don't think we ever thought we were going to, but it's nice to hear your report, telling us where you fit in. You're trying to look after your own organization through some new laws that may come through the House, so I guess we'll wait until we see them and go from there, but I don't think it was ever our intention to do that. As I say again, it's nice to hear from you, telling us your reasons why. That's all I really have, Mark.

**Mr Rock:** Lest it be thought that we've answered a question that wasn't put, we did receive a letter in July suggesting that the committee was going to examine the question as to whether the jurisdiction should be extended. It's for that reason we directed our—

**Mr Murdoch:** Yes, I understand that.

**Ms Zanana L. Akande (St Andrew-St Patrick):** I too must apologize for being late. This place hums with meetings.

**Mr Murdoch:** We weren't together, though.

**Ms Akande:** No.

**The Chair:** Thank you, Mr Murdoch, for that clarification.

**Ms Akande:** You get into a lot of trouble for those things.

**Mr Murdoch:** We only met in the hallway.

**Ms Akande:** I did want to ask you about the lay representation in your society. It says there are four persons who are members of the law society as lay benchers. I wanted to know what the total number of the group is so that I could have some idea about the percentage of lay representation that exists within that group.

**Mr Rock:** The total number of elected benchers is 40, that is to say, elected lawyers to serve as benchers, and four are appointed by the Lieutenant Governor in Council. So it's 10% at the moment. The legislative package we propose to deliver to the government within the next year contemplates an increase of lay involvement through the appointment of six additional lay benchers who would have responsibilities in the discipline field. So we do contemplate a broadening of the lay involvement, but at the moment it's 10%, or four of 40.

1030

We're aware, for example, of the changes in the medical profession that are anticipated when the Regulated Health Professions Act and code are enacted. It will increase lay involvement in that profession. We've been watching that with interest. As I say, we've already decided to ask the government for an increased lay involvement for discipline matters and we're quite happy to discuss whether there should be a level of increased lay involvement generally for matters of policy as well. But at present that's the position we've expressed.

**Ms Akande:** Let me ask you, then, since it's something your society has already discussed and is prepared to ask for, what has prompted, other than the real concerns about a profession examining itself, your decision to increase the number of lay representation by six and why in fact you have restricted it only to issues of discipline.

**Mr Rock:** To answer the first question, when we undertook a wholesale re-examination of our discipline procedures, we concluded that there should be a markedly increased involvement by lay persons in the discipline process. For example, on every discipline hearing panel of three, one person should be a lay person. On the authorization committee to decide whether to lay a charge or not, there should be lay involvement. When the matter comes before the group assembled as a whole for ultimate decision, there should be lay involvement. We found we'd allotted more responsibilities to lay persons than we had lay benchers, and so we concluded it was necessary to have a broadened lay involvement.

On the second question, when we made the decision that the involvement of the additional lay benchers should



only be for discipline matters, that was 1990. We haven't considered the matter as a broad question of policy since then. At the time, it was felt that we already have a significant lay involvement in the making of policy in general matters and that it should remain predominantly a professional matter, with lawyers making the decision, what policy should govern the law society. I wonder today whether convocation might take a different position and whether there might be a preparedness to welcome an additional lay involvement in all matters involving the law society, but at least at the time, that was the consideration in our minds. My colleagues may have additional recollections.

**Ms Akande:** Certainly it's not my wish to monopolize, and I don't know if there are any other people who wish to ask questions, but I would certainly agree that additional representation should be a point of discussion for more than just discipline. Since law is whatever it's proven to be at the time and it is a relative thing and reflects the society's values, it would certainly be an advantage to have some of those values reflected by the persons who would sit, but I suppose that's the topic of another discussion for another meeting.

**Mr Rock:** Perhaps.

**The Chair:** Ms Haeck, please.

**Ms Christel Haeck (St Catharines-Brock):** I greet you in my other role as not just a vice-chair but as a sitting member. Following up on some of the comments that Mrs Akande has made, and knowing as someone who sat on boards in her own community that it takes a while to basically become conversant with what is happening on a board or an agency, what kind of orientation do you provide for lay benchers? I assume these are people who really and truly do not have any association with the legal profession other than that they're interested in the law?

**Mr Rock:** Let me respond by using an example, if I may. We were delighted earlier this year when the Lieutenant Governor in Council appointed Hope Sealey as our newest lay bencher. She joined us in August or September, I believe. In advance of her joining committees and convocation, we invited Ms Sealey to spend time with the law society—secretary Richard Tinsley can provide greater details if his memory serves—and to meet with lay benchers who have been serving for an extended period, that she might learn about the procedures in convocation and on our committees, ask any questions she might have, review and ask about material being provided to her and develop a feeling of comfort with what her new responsibilities entail.

Since that time, by coming to our committee meetings and participating in our processes, she has obviously learned a great deal. But in terms of formal orientation, I believe it consisted of meeting with the other lay benchers and spending at least a day, and perhaps longer, with the law society. Richard, can you provide further detail?

**Mr Richard Tinsley:** Yes. In addition to meeting with staff at the law society, we also provide them with copies of the last annual report, which sets out the major committees of the law society, the ongoing initiatives. We also have an orientation booklet which contains photographs of the senior staff, organization charts, and again a description of

the standing committees of the law society and the current initiatives that each committee is going on.

We then sit down with the lay benchers, either by way of a telephone conversation or with them actually in the building, describe to them again, filling in whatever gaps may occur from their reading of the material, what committees they'd like to be on, saying what their area of expertise is. In the case of Ms Sealey, did she want to sit on communications committee? In most instances, they like to serve on committees they don't have the expertise in because that's what they do for a living and would rather work in compensation fund or some of the other committees.

**Ms Haeck:** The length of appointment, is it sort of typically three years, or is there a staggered appointment of lay benchers?

**Mr Rock:** I believe it's four years. The elected term of benchers is four years and I believe—

**Mr Tinsley:** The term of lay benchers runs concurrent with the election of the benchers so that they hold office following the election at which the benchers are elected until the next election of benchers. Some of them do apply for reappointment or are reappointed. Some of them decide that one term is all they wish to take and are not reappointed.

**Ms Haeck:** If I can make sort of an off-the-wall comment at this point, the public perception of groups like yours, as well as, say, the College of Physicians and Surgeons is one that it's a bit of a bastion that is very hard for average members of the public not only to really understand, but if they have a concern they're not always sure they are going to be fairly treated.

That's the kind of thing I hear in my office and I understand from the dialogue program—I was a librarian in my other life, and having worked in the reference department for the better part of 16 years, I have an idea of what kinds of services you do provide. I do commend you for the fact that you are trying to be responsive to the public, but the perception is still there that it's not necessarily an average member of the public against the legal community; that it isn't necessarily a fair battle if there is a serious concern. How does one really level that playing field, to use the current jargon, so that people really do feel they're going to get a fair shake if they have a concern?

**Mr Rock:** If I may say so, that's the very concern that prompted the intensive investigation and assessment of our complaints process that June Callwood headed up in 1989 and 1990. We were delighted to have June Callwood as one of our lay benchers for four years, perhaps longer. One of her principal contributions to the public in that role was to chair a special committee looking into complaints procedures.

I referred earlier to a reform package for bringing forward to the government in the next 12 months. That package includes proposals to change our complaints procedures in a way that June Callwood and her committee proposed and convocation approved. Let me, with that background, respond to your question.

It was June's thesis that a law society dealing with complaints shouldn't act in so much a legal frame of



mind—that is, to say, “Has this complaint been made out, should it go forward to a formal hearing and is there sufficient evidence to take action?”—but rather should approach it from a remedial point of view. Nine out of 10 complaints are problems with communication between the lawyer and the client. Eight out of 10 complaints can be readily resolved with staff working proactively with the client and the lawyer saying: “Come on, let’s get to the root of this issue. What really is the problem here? Can’t you do something about it to satisfy this client’s concerns?”

1040

It was her thesis that if we took that approach to complaints instead of the more legalistic approach that we are used to, there would be a higher level of satisfaction and we’d tackle some of that feeling to which the Vice-Chair has referred, namely, the feeling that, “Osgoode Hall’s a very large grey building and I don’t want to go near it because it’s a club.” For example, she suggested telephone resolution of complaints. Many of her proposals we’ve implemented, the ones that don’t require legislative change.

Instead of being lost in a sea of paperwork, where you have to write out your complaint and then have the lawyer respond in writing, when the client walked through the law society’s door with a complaint, the staff member would get on the phone and say, “What is the real story here? I have someone in front of me who’s very unhappy. What’s your response?” and then put that to the client and engage in a dialogue trying to come to grips with the problem and resolve it quickly and effectively.

The legislative changes we propose would include empowering staff and ultimately the complaints commissioner to decide whether the complaint should be resolved on the spot, requiring the lawyer to refund the fee, or part of it, or turn over the file, or take other concrete, immediate action that produces results.

That’s a long answer to your question, but I think the response ultimately will be that kind of approach: responsiveness, a practical, pragmatic dealing with complaints to see how they can be resolved, rather than whether they can be proven legalistically. That’s the thrust of June’s report which we’ve adopted, much of which we’ve implemented, and some of which requires legislative change. If the message gets out to the public, as we’re trying to get it out, that we’re committed to that kind of response when concerns or complaints arise, I think we’ll go a long way towards meeting the appearance we have and to which you’ve referred.

**Ms Haeck:** If I can make a small suggestion to you, our offices as MPPs tend to be used as advocates in a small way and I would love to have some of this material so that when people come in—and they do—to make a complaint or basically say, “Look, I’m not getting heard. What channels do I have available?” we have the information pamphlet to hand to someone and say, “They are really trying to meet your need and this is a good route that I can recommend.” There are 130 of us who definitely service all parts of the province, and I think we would all be doing our jobs to see that our constituents and your clients are being better served.

**Mr Rock:** I am delighted at the suggestion. I think it’s a very good one and we’ll act on it.

**The Chair:** I want to thank you for taking the time to appear before us this morning. I know you had a very busy schedule. Thank you all for appearing.

**Mr Rock:** It’s we who thank you for the opportunity.

#### ONTARIO PUBLIC SCHOOL BOARDS’ ASSOCIATION

**The Chair:** The next group appearing is the Ontario Public School Boards’ Association, please. Thank you and welcome. I’ll just wait a moment till the noise quiets down.

I want to thank you for appearing before us. You have one half-hour for your presentation. I hope you leave time at the end so the members can ask questions and/or comments. I will try and get them all in if I can. When you start, can you please read your names into the record and begin when you’re ready?

**Ms Gail Nyberg:** Yes. The very first thing I would like to do is introduce myself because I am not, as your agenda says, Paula Dunning. I am Gail Nyberg, the treasurer of OPSBA. Due to some weather conditions, Paula did not want to risk the trek from Sault Ste Marie because she may not be able to get back. I’d like to introduce Mike Benson. Mike Benson is the executive director of OPSBA.

I’ll give you a little bit of background on OPSBA before I begin. OPSBA is the Ontario Public School Boards’ Association and we represent over 90 public boards in Ontario, of all sizes and from all regions. OPSBA’s mission is to promote and enhance public education by assisting member boards in fulfilling their mandates by developing effective partnerships with other groups interested in public education, and providing a strong and effective voice speaking on behalf of public education in Ontario.

It’s our belief that the role of public education is to provide every individual with equal access to education opportunities, regardless of gender, race, religion, ethnic origin, disability and place of residence in Ontario, in English or in French, consistent with the provisions of the Charter of Rights and Freedoms.

Locally elected school boards play a key role in ensuring that schools remain responsive to both the program requirements and resource limitations of the communities they serve.

We’re very pleased and appreciate the opportunity to come and respond to this committee in the review of the Office of the Ombudsman. OPSBA, representing over 90 public boards from across the province, has an interest in any proposals that expand the jurisdiction of the Office of the Ombudsman to include the investigation of complaints regarding school board services.

The Ombudsman—I have trouble with this word. Maybe our first recommendation is that we change the name.

**Mr Murdoch:** We don’t have trouble here with that.

**Ms Nyberg:** The Ombudsman, in her recent report to the standing committee, stated, “While school boards are funded by a municipal tax base, an individual has very



little recourse if there is dissatisfaction with actions or omissions of elected trustees and superintendents."

However, in our experience of school boards in Ontario, there currently exists practical and effective contact and influence by the electorate over the activities of their school boards. School trustees across the province are in regular contact with parents and ratepayers. Citizen delegations regularly appear at school board meetings.

As others have noted in the submission to the standing committee, most notably the Metropolitan Toronto School Board and the Ontario Separate School Trustees' Association, the Education Act provides a wide variety of provisions which ensure accountability and due process for individual parents and ratepayers. The following are just some of the key provisions the Education Act provides:

School boards are obliged to hold their board meetings in public and no one may be excluded except for improper conduct. School boards are only permitted to exclude the public from committee meetings, not board meetings, when the subject matter before the meeting falls within the narrow exceptions of security of property, disclosure of personal information, acquisition or disposal of property, labour negotiations and litigation.

Parents have the legal right to visit the schools their children attend.

School boards are obliged to give public access on request to records not containing personal information.

The Minister of Education is required to, and in practice does, ensure that all exceptional children in Ontario have appropriate special programs available to them.

Under the Education Act, the Minister of Education has very broad powers of investigation into any educational matter in Ontario and may refer any matter to the court for opinion and decision.

A parent of a pupil or a pupil, if that pupil is an adult, may appeal a suspension by the principal.

A pupil may be expelled by the board only after a hearing held on notice to the parent of the pupil.

The parent whose belief that his or her child is excused from compulsory attendance from school is challenged has the right to a hearing into the alleged excuse.

A parent has a right to participation in a hearing, conducted by a special committee composed of educators and a physician, into whether a pupil is unable to profit by instruction by reason of mental or other handicaps, to make representations to the board which considers the report of such a committee and to make representations to the special education tribunal if the parent brings an appeal to that body.

The parent of an exceptional pupil who does or may require a special education program has four opportunities to appeal the initial decision of the identification, placement and review committee related to the pupil's proposed program.

An applicant for admission to a secondary school who is denied admission by the principal may appeal the denial to the board.

#### 1050

The parent, or pupil if an adult, has the absolute right to access to pupil records.

The parent, or the pupil if an adult, has the absolute right, even as against the usual court process, to control who, apart from educators who require access for educational reasons, may examine pupil records.

In addition the parent, or the pupil if an adult, has a right to require the principal to correct inaccuracies in or alter pupil records that are not conducive to the improvement of instruction of that pupil. In the case of refusal to correct or alter, a parent or a pupil has the right to appeal to the appropriate supervisory officer or to the provincial appointee who is required to hold a hearing before making a decision.

A teacher has a right to a hearing before a board of reference in the event of the board terminating his or her teaching contract.

These provisions in the Education Act, in addition to the provisions in the Statutory Powers Procedure Act which govern decision-making hearings, provide standards of procedural fairness. In addition, there is availability of judicial review in decision-making.

There are also additional accountability mechanisms which exist through the Municipal Freedom of Information and Protection of Privacy Act. School boards must report to the office of the municipal information and privacy commissioner each year on the activities that have occurred under this act.

In addition, changes are currently being considered by the provincial government with respect to the Municipal Conflict of Interest Act which may include revised and strengthened procedures for declaration by school trustees of assets and sources of income.

The Ontario Public School Boards' Association, in consultation with its member school boards, has responded to the three questions proposed in the statement of jurisdiction section of the standing committee report.

The first question is, should the jurisdiction of the Office of the Ombudsman be expanded to include locally elected school boards?

After consulting with all 90 member boards, the responding boards did not support the expansion of the jurisdiction of the Ombudsman to include school boards.

OPSBA and its members are always interested in improving service and accountability. Indeed, public school boards across this province emphasize the active involvement of parents and ratepayers. However, it is felt the expansion of the Office of the Ombudsman to include school boards would be redundant in light of the existing legislation and procedural safeguards which currently exist. The cost of expanding the role of the Ombudsman would therefore be a poor use of scarce resources which would be better used to further enhance the delivery of quality education.

Also, it must be recognized that locally elected school boards are local governments funded from the local property tax base. As local governments, school boards must reflect community needs and values, and therefore uniformity and standardization that is characteristic of provincial public services may not necessarily apply.

If the investigative activities of the Office of the Ombudsman were to be extended to school boards, the fundamental



principles of local diversity and decision-making in the delivery of education must be recognized.

As well, OPSBA believes the power of the Ombudsman office should remain as in the current legislation, that of investigation and recommendations to, first, the responsible administration, then to the minister, and then to the Premier. OPSBA would not support any suggestions that the Ombudsman be given additional powers to mediate disputes or direct changes, as noted below.

The second question was, should the Ombudsman's power to make reports be altered in any way? Should the Ombudsman have the power to assist parties by acting as an impartial third party or arbitrator?

OPSBA would not support the suggestion that additional powers for resolution of disputes be provided to the Ombudsman. The Ombudsman should make recommendations only. The resolution of the problem should remain the jurisdiction of the local government accountable for that service; that is, the provincial or local levels of government. The present process of drawing issues to the attention of, first, the authority in question, then to the minister responsible, and lastly to the Premier, is the preferred process.

Are any amendments necessary to give greater effect to the recommendations of the Ombudsman? Should government organizations be authorized to make payments to complainants or to reconsider decisions in response to Ombudsman recommendations?

OPSBA would not support any changes in legislation which would result in payments to complainants. It is our understanding that the Ombudsman's office provides all citizens with a relatively accessible avenue to launch complaints about public services. The investigation process is a confidential one. It is not a legal process and therefore does not require payment-of-costs provisions.

The Ontario Public School Boards' Association appreciates this opportunity to present to you and we welcome your questions.

**The Vice-Chair:** Thank you very much for your presentation. I would ask Mrs Akande to pose her question.

**Ms Akande:** Thank you very much. In my previous life I was a school principal, something that I miss—

**Ms Nyberg:** More these days?

**Ms Akande:** —so I'm quite aware of and respectful of the locally elected school boards' responsibilities. However, the fact that school boards are intended to reflect the communities in which they're elected sometimes puts them at odds with the ministry's directions, or at least with the emphasis expected within the ministry's directions, and that conflict causes some people within those boards, some students, to be served, let us say, differently from what is acceptable. How would you recommend that this conflict be solved? I recognize there is a process, but it is not fast.

**Ms Nyberg:** I think I understand the question, and maybe if I can phrase it so I'm sure that I understand what you're saying, and if I use an example, it may help me, and that is around the whole issue of special education.

We know that Bill 82 is very specific in the needs of a child, and there are all those levels of appeal, but sometimes

boards, in order to save money, do not follow the legislation quite the way, possibly, you and I would like.

The reason I believe that the way the process exists now is the best is that they do have their local trustee and then the board, and they are usually much more powerful in that community than any other government agencies in terms of their electability being on the line with the parents.

I also believe it's only upon some investigation by the minister that the Ministry of Education could determine that this board is not following the recommendations. That's why I believe, as they exist now, those procedures are better to address the problem that you've brought up.

**Ms Akande:** Would you accept, though, in the hypothetical situation that you've used, that a parent continuing to be dissatisfied with the ministry's involvement would then have appropriate recourse to the Ombudsman in order to effect some more speedy decision by the ministry?

**Ms Nyberg:** I know where you're going and I sympathize with where you're going, but I believe that after a parent has gone to the local board, the local MPP—because the province has responsibility for education—the Minister of Education and subsequently the Premier's office, if that parent has not got satisfaction, that satisfaction is not going to happen.

**Ms Akande:** I'm not as willing to give up on that, but thank you.

**The Vice-Chair:** Are there any other questions? Mr Murdoch.

**Mr Murdoch:** I don't really have a question, just a statement. I just want to thank you for bringing this to us, and I certainly believe what you said here is right. I believe in the local autonomy and I think that's the way it should be run. I just appreciate your giving this to us so that when we make our recommendations, we have this with us. But I am in agreement with what you have to say.

**Ms Nyberg:** Thank you.

**The Vice-Chair:** Are there any other questions? Mrs Harrington.

**Ms Margaret H. Harrington (Niagara Falls):** I wanted to ask you if you would be willing to comment on the broader aspect of the idea of the Ombudsman's office in Ontario. We've been looking at it and comparing it with other jurisdictions. I know you probably are very busy just within your own scope, but perhaps I could pose this question to you and see if you feel comfortable answering.

I think the basic question that we're trying to get at is the definition of independence from government. The Ombudsman's office is to be responsive to the people of Ontario as an independent arbitrator, yet in some sense it is accountable to the Legislature. So that's what we're trying to get at, this definition of what "independence" in this case really means.

The fact that we have a standing committee on the Ombudsman of the Legislature in some ways gives the Ombudsman more backing so that if her recommendations are not carried out, this committee can then look at that.

But what I really want to ask you is if you have any comments you would feel comfortable making with regard



to how you see the Office of the Ombudsman connecting, as being independent yet being accountable to the Legislature.

**1100**

**Ms Nyberg:** I would like to try then, and I'm sure Mr Benson would. I want to make something clear before I do: It will be my comment and not the comment of OPSBA at this time.

I appreciate the job the Office of the Ombudsman does. As an individual citizen, I have never accessed it, but I'm very happy it's there. I have a little difficulty in understanding how you're independent when the people who are responsible for whether you sit there are the government. When the government doesn't like the kinds of things you're doing, you're not there, so maybe I question a little bit their real independence from a personal level. I do accept and am happy that they're there, but I have some questions about whether they really are independent.

**Mr Michael Benson:** If I might, I think most reasonable people would believe that there is an important role for an Ombudsman, particularly at a provincial level, where perhaps the activities and the decisions at the provincial level of government are just a bit more distant from the communities as compared to, let's say, school boards, which are very closely tied to communities. If people have a disagreement, their accessibility is, I guess, that much closer; for example, Mrs Akande's comments with respect to a concern about the Ministry of Education as separate from school boards. That likely is a role for an Ombudsman to intervene if there's not satisfaction at the provincial level with respect to a decision that's been made at the ministry.

Its independence: There is a role for someone such as the Ombudsman to be independent of government, but of course any body needs to be accountable in some fashion and it would make sense that, over government services, the accountability be to the Legislature, which is the present practice of the Ombudsman. I think by and large that's something most people would find acceptable, in that last recourse kind of process; that people who have had frustrated attempts at the various processes that are in place, that's their last recourse place they go to.

With respect to the school board level, though, the Legislature has so many procedures and processes in place already to account for almost any eventuality you can imagine, whether it be student concerns, parent concerns, the taxpayer, teachers. If they have certain concerns with the board, the solution there is through mechanisms which have been legislated. The need at that level seems a little more redundant, and in very tight fiscal times, one questions the benefit of that.

**Ms Harrington:** Just to briefly follow up, do you see any problem with the way the accountability is now, the independence?

**Mr Benson:** I don't. Certainly at a personal level, I do not see a problem with the accountability being to the Legislature, that there be a function like that within the broader context of the government activity.

**Ms Harrington:** Thank you.

**Ms Haeck:** I have to say that while I understand a number of your points, I'm going to reflect some of the concerns from within my community, so they're not necessarily going to be what you have put forward.

People, my way—and that happens to be St Catharines-Brock, so St Catharines and the town of Niagara-on-the-Lake—have some concerns relating to accountability. They also feel in some respects, and it's not just strictly a monetary one, that they would like to feel there is some sort of appeal mechanism if they see that a decision has been made which puts them at a disadvantage.

I'll give you a local instance relating to a transportation committee recommendation to change how students are bused and what kind of subsidy is available for student busing. A number of parents who are low-income or on assistance felt that they were put at very serious disadvantage as a result of that decision, because they see school boards as being taxpayer supported and they should be listening to them if they are in a disadvantaged situation. Despite having appealed to the transportation committee and then the board as a whole, they still have not felt that they have had an impartial hearing.

Further, the Ombudsman looks at issues like timeliness, whether procedures are in place, a range of issues like that, to make sure that there has been sort of a fair hearing of that individual or that group. I would be interested in hearing your remarks as to the responsiveness of the boards to issues like giving timely answers, dealing with the disadvantaged, as well as having the appropriate procedures giving a sense of fairness to the constituent.

**Ms Nyberg:** I'll let Mr Benson go first.

**Mr Benson:** I don't know the specifics of the situation you're describing, but in general it would be wonderful if we could pick up every child and take them to school. That's a given that would be a tremendous service to be able to deliver. The challenge for a board of education is one of ensuring that there's proper accessibility for all—that's what public education's about—on the one hand, and the costs of providing that, on the other, so there's a constant tension between trying to meet the needs and provide the service that's been requested, and the cost involved in doing that.

Without knowing the details of this, that's one of the roles of a school board, and it has to make decisions. Whenever that's the case, there are going to be times when people are going to be less happy with the decision than if it went their way.

Having said that, if there is real concern with respect to the impartiality of the hearing, then that's something a little bit different. Within the education system, typically the appeals then would be through the ministry on those kinds of things. You deal with the board first. If it's a question of impartiality of the board, the Minister of Education, I'm sure, would have many letters. The minister has very broad powers under the act that she's responsible for to look into that kind of thing to see if there's any merit in taking it further. So there are mechanisms there to deal with those kinds of things right now.

**Ms Nyberg:** What I would add is that when you don't know the details, it's hard to make some kind of decision, but I think the role of that school board is to listen to all the details, like Mike said, and there's always going to be somebody not happy with the decision. To give you a local example, recently the board that I sit on overturned a suspension that a school had issued. We had some very happy parents, we had what I consider very responsible trustees, but we had some very unhappy school administrators.

Very rarely, as the decisions that you also make in government, does the decision make everybody happy. It's hard to comment on your specific case because I don't have all the facts, but they certainly do have the avenue of the Ministry of Education when they believe that it was not a fair decision.

**Ms Haeck:** Just a quick comment as well: On page 4 of your brief, the second-last bullet point, you mention that your mechanisms for accountability also include "alter pupil records that are not conducive to the improvement of instruction of the pupil." Could you explain that?

1110

**Ms Nyberg:** Every student in Ontario has a record called an Ontario student record, what we know as OSR, and there is very tight regulation of what could be in there and I'll give you an example.

If there was a letter on file, say, from grade 2 that said the student was a behaviour problem and it's now grade 5 and little Johnny is no longer a behaviour problem and that has been corrected, it may be not conducive to his education to have that in his OSR so that his next teacher looks at it. A parent can request that that kind of material be removed.

**Ms Haeck:** Okay. I've had representation from a parent who felt that since her son—and this was the comment she made—was violent and that he had not only assaulted students but had intimidated a number of teachers, somehow the school wasn't supporting her in her efforts to get some sort of care for him—

**Ms Nyberg:** You want to put it in.

**Ms Haeck:** Yes, and she felt that it wasn't there. Would that be something that, despite the fact of her request, should be there?

**Ms Nyberg:** I don't have the act with me but even if I did, I believe that if you can get something out, there must be a way to get something in. To try to answer that—I really don't know the answer. I've never had a parent want to get something in, but I have had a number want to get something out.

**Ms Haeck:** Okay. Thank you very much.

**Ms Akande:** One other thing, and very quickly. You have pointed out well in your presentation, and I thank you for that, the process by which complaints or issues are dealt with. However, there seems, at the end of the day, only a process for soliciting support. There doesn't seem any real basis for the resolution of the conflict. May I suggest to you that it may well be a role for the Ombudsman—and not necessarily—to act as a mediator, let us say

in your previous suggestion or situation, between the board and the ministry in situations of conflict.

**Ms Nyberg:** It's one I haven't given any thought to, but it's one I certainly would be interested in listening to more on.

**The Chair:** Thank you very much, Ms Akande. Any further questions and/or comments? Seeing none, I want to thank you for taking time out of your busy schedule to appear before us this morning.

#### ONTARIO NEW HOME WARRANTY PROGRAM

**The Chair:** The next group appearing is the New Home Warranty Program. Good morning, ladies and gentlemen. I want to thank you for taking the time this morning. You have a half-hour for your presentation. I hope you would leave some time at the end for questions and/or comments from the members. As you begin, I ask that you read your names into the record for us. Take your time, feel relaxed, and begin when you're ready.

**Mr Reginald Ryan:** Fine. Thank you very much, Mr Chairman. Good morning, ladies and gentlemen. I'd like to introduce Ms Joan Huzar, who's a representative of consumers on our board of directors; Jan Mowat, the manager of communications in the warranty program; Steve Martin, our corporate solicitor; Aubrey LeBlanc, our chief operating officer and Mr Barry Rose, president, registrar and chief executive officer of the organization.

I'd like to thank you very much for inviting us here this morning to make this presentation before your committee. Time has not stopped for the warranty program since we last appeared before the committee in 1988. Today I would like to briefly review for you what we've been doing and where we're at. To set the stage for the discussion, I'd like to begin by giving a quick overview of the warranty program.

The Ontario New Home Warranty Program, which is the name of the corporation that administers the program, was established in 1976 to protect consumers by administering and enforcing the Ontario New Home Warranties Plan Act. Our goals are three-pronged: consumer protection, builder regulation and builder education. We want to ensure that every new home purchaser in Ontario receives a high-quality product.

The Ontario New Home Warranty Program is the only mandatory warranty program in Canada. As you probably know, every province in Canada has warranty, but in the other provinces the program is voluntary, and to the extent that some builders do not belong to the programs, there are quite a number of home buyers in other provinces who do not have the benefit of the warranty program that we have in Ontario.

We are an independent, non-profit corporation, one of the few corporations that I'm aware of that is separate and apart from the government of Ontario but administers a provincial statute. We are funded solely by builder registration, renewal and enrolment fees. Both our operating budget and our guarantee fund are derived from these fees. We do not receive one cent of government funding.

Currently there are approximately 5,500 builders registered with the program. Since 1976 the registrar has refused



or revoked the registration of almost 2,000 builders who did not meet the program's standards or requirements.

The warranty program has provided protection to the buyers of more than 600,000 new homes in Ontario since its inception. Currently there are over 300,000 units covered.

The composition of our board of directors guarantees representation from our key stakeholders. The board includes representatives from the builders, consumers, the Ministry of Consumer and Commercial Relations, municipalities, mortgage lenders and mortgage insurers.

As evidence of our continuing commitment to improve warranty protection for new home buyers, we have undertaken initiatives to enhance our warranty coverage.

In 1989 we increased the maximum total warranty coverage for each single-family home or condominium unit from \$50,000 to \$100,000.

For new homes enrolled after December 31, 1990, the builder's warranty obligations were extended to two years on the building envelope as well as two years for defects in materials and workmanship in the electrical, plumbing, heating and distribution systems and for violations against the health and safety provisions of the Ontario Building Code. Basement leaks have been covered for two years since 1987.

Protection against major structural defects has been increased from five years to seven years.

Delayed closing coverage for freehold homes was provided in 1988, and in 1991 a similar enhancement was introduced to protect condominium unit buyers against delayed occupancy.

The Ontario New Home Warranty Program offers new home buyers substantial warranty protection. As I mentioned earlier, the total maximum warranty coverage on each home or condominium unit enrolled in the program is \$100,000. The common elements of condominium projects are covered up to a maximum of \$2.5 million.

In addition to a head office which is located in North York, the Ontario New Home Warranty Program has eight regional offices across Ontario to serve new home buyers. We took steps to streamline the claims process in our organization earlier this year. Now, once we receive a complaint, a warranty specialist from the local regional office is assigned to manage it through to a successful conclusion. We believe that having one central contact will enable us to handle these problems more efficiently as well as create a smoother process for the home buyer.

Once we receive a complaint from a home owner we advise the builder immediately. While our negotiations are informal at this point, clearly we want the builder and the owner to resolve the dispute. If the problem cannot be settled, we send a trained conciliator to inspect the home and to meet the home owner and the builder together.

Both the home owner and the builder receive a copy of the conciliator's written conciliation report. If either does not agree with the findings, he or she may discuss it or their problem with the program's regional manager, who will use his best efforts to produce a solution.

Home owners who take issue with any decision arising out of a formal conciliation have an absolute right of appeal to the Commercial Registration Appeal Tribunal.

## 1120

Once we are advised that the home owner wishes to pursue the appeal process, a further review is carried out at head office by a senior management team and a strong effort is made to negotiate a settlement. The warranty program views the tribunal as an avenue of last resort and works very hard and successfully to negotiate a settlement beforehand.

If the review by senior management is not successful, then the matter is heard and ruled on by the Commercial Registration Appeal Tribunal. Home owners who are not satisfied with the decision of the tribunal have a last avenue of appeal through the Divisional Court to the Supreme Court of Ontario.

Throughout the process, of course, home owners may appeal, and some do, to their civic politicians, to their MPP or the Minister of Consumer and Commercial Relations with a request that they look into the problem on their behalf. This committee is aware, of course, that both the tribunal's decisions and requests brought to the attention of the minister's office can be fully reviewed by the Office of the Ombudsman.

Since the warranty program's last presentation to this committee in 1988 we are not aware of the Ombudsman's office being directly involved in either a review of a CRAT decision or a warranty problem in which the ministry was involved.

I believe the Ontario New Home Warranty Program's track record in dealing with home owner complaints has been quite successful. Over the past five years, an average of only six out of every 10,000 new home buyers have actually appeared before the Commercial Registration Appeal Tribunal. That's six in 10,000 new homes that have been built and sold.

Looking at the picture on a global basis, over the past five years we have provided warranty coverage for 273,375 homes and participated in only 162 appeals before the tribunal.

To date, the warranty program has paid out over \$100 million in single-family and condominium claims. We see preventing construction defects as a good business strategy to effectively control and reduce our claims costs. How is our prevention strategy relevant to consumers? We believe that it reinforces to new home buyers our cornerstone message, which is "Choose a reputable builder."

To help consumers effectively research builders in their area, we produce each year a booklet that we call the Home Buyer's Guide to After Sales Service. I believe you have that in the material that was provided to you. This booklet's been published since 1988, and the book rates the consumer service track records of all builders registered with the program on a named basis.

One of our most important initiatives—indeed, I know of no other warranty program which has embarked on so ambitious an undertaking—the book has proven to be not only an excellent way of helping new home buyers to choose a builder but also is an excellent tool in encouraging builders to improve their after-sales service. Approximately 90% of the ratings in the 1992 guide were above average or excellent, compared with approximately 80% in



the 1990 edition. So there has been improvement over the past two years to where we've now achieved a very high level, from our standpoint.

The warranty program places great importance on making consumers aware of the program and helping them understand their warranty coverage. In addition to the series of booklets and brochures included in your briefing book, we also produce a newspaper column which appears weekly in many high-circulation newspapers across the province. Warranty program staff are also regular speakers at new home buyer seminars held in numerous cities.

Prevention is also an important strategy in our builder regulation activities. Realizing that we, on our own, cannot accomplish our goal of having all new homes in Ontario built free of defects, the warranty program has undertaken a leadership role in developing a number of prevention programs in partnership with various segments of the residential housing industry.

For example, we have recently initiated an experimental project in Hamilton to explore the feasibility of having a municipal building department carry out inspections on behalf of the warranty program when building inspectors are on the site. Similarly, we are reaching out to manufacturers of building materials. We are accumulating a claims database which will be second to none in terms of tracking defects in building materials. In many cases, the warranty program is probably aware of problems before the manufacturer is. We are establishing communication links to share this information with them.

We are also working to make architects and engineers accountable for technical audit findings and conclusions. These reports are important documents in identifying and correcting defects in design, materials and workmanship early in the game and lead to fewer complaints and claims, especially in condominium projects. We also hope that they will use this knowledge in future projects.

The Ontario New Home Warranty Program has worked closely with the Ministry of Housing in developing proposed amendments to the Ontario Building Code. I am proud of the lead role the program has taken in developing a partnership with the Ministry of Housing, the Ontario Building Officials Association, Ontario Hydro and the Ontario Home Builders' Association to produce a series of one-day workshops across Ontario to train members of the residential building industry on the proposed amendments to the Ontario Building Code. The series will be held in the spring of 1993, to coincide with the implementation of the new code.

In addition, we've undertaken an initiative to ensure that the residential building industry can deliver on the proposed changes to the code. For example, information gathered from a ventilation field demonstration is being sent to the Ministry of Housing for analysis and will prove important in influencing the specifications of the new ventilation provisions in the new code.

In September, the warranty program also appeared before the standing committee on social development in support of Bill 112, An Act to revise the Building Code Act.

Three years ago, the warranty program created the Ernest Assaly award, named after our first chairman, to

recognize excellence in after-sales service and quality of construction. The selection process is rigorous and has been carefully developed to be fair to small and large builders. It is no overstatement to say that the award is coveted by the residential building industry. Again, home buyers benefit from the builder's pursuit of excellence and pursuit of this award.

Based on performance, we believe that the Ontario New Home Warranty Program is fulfilling its warranty obligations efficiently and effectively and that our processes are just and fair. We believe that the warranty program demonstrates a real concern for new home buyers in Ontario and that substantial safeguards are in place to ensure their fair treatment.

That concludes our presentation, Mr Chairman. I and my colleagues will be pleased to answer any questions your group may wish to put to us.

**Ms Haeck:** Thank you very much. It's been an illuminating presentation and I appreciate your comments. I have to say that my office so far has had only one or maybe two complaints regarding the building of a home, so I guess that speaks for the industry, and yet again I guess we do have some questions, since not all of the builders are registered.

My question really relates to, how is this particular handy volume distributed? I have been working in libraries a good part of my adult life and I have never seen this before. I think it's something that should get wider distribution, so I'd be anxious to know how you get it around.

**Mr Barry Rose:** We hope it is getting to libraries. I'm glad you've brought that up, because we do make it a point to try to get it into all the libraries we can as a reference book.

**Ms Haeck:** Could I ask you to check with your communications, your customer service people?

**Mr Rose:** We will indeed.

**Ms Haeck:** I think it's something people really should have an opportunity to consult and determine if the builder they have chosen is somebody who is a reputable builder.

**Mr Rose:** Thank you very much. The other ways people get it is that we advertise and they can phone in; there's a 1-800 number. We also distribute it at home shows throughout the province.

**Ms Haeck:** As far as getting out some of the other information about the program is concerned, are any registered builders required to hand out information about the program? When people are signing on the contract, say, do they have any idea of what the program's about in advance of actually signing on with the builder?

**Mr Rose:** It's not a requirement of their registration with the program, but what the builders should do is that we provide them with our brochures and they should hand that brochure to a potential home buyer. I couldn't guarantee that every builder in Ontario, though, did that.

The other thing they do have to provide by statute is a certificate of completion and possession by the warranty program when the home owner closes on the purchase. That guarantees that the home owner receives his warranty certificate.



1130

**Ms Haeck:** Does that also then require the builder to walk the property with the new owner so they are satisfied that if there are deficiencies, they will be corrected?

**Mr Rose:** Absolutely. It's very important that they both note the deficiencies on that certificate at the time of closing and that anything that has been noted on that claim has been accepted by the Commercial Registration Appeal Tribunal as a complaint or statement for claim.

**Ms Akande:** I too appreciate the material and the information. I must say I've never bought a new home, but I have been in touch with people who have and I have heard the succession of horror stories sometimes around things that are less than adequately completed, and the long harangues they've had with builders. I've heard your answer to Ms Haeck that you can't guarantee that every builder gives everyone the information, nor can you guarantee that every home owner reads it, but at the same time, I am wondering to what extent you monitor or even spot-check to see how widely known, how widely communicated, the information about your services is.

**Mr Ryan:** Actually, we've been conducting what you might call consumer surveys of people who have bought homes on that very issue, and I guess we're finding that we're not as successful as we'd like to be in having material put in their hands. It's an ongoing effort and one that's receiving more attention over the last few years.

It's not easy, because as you realize—you've never bought a home—it's not like buying toothpaste. A person maybe buys a home once every five or six years or maybe it's once every 10 years. You can spend a lot of money advertising in the paper and waste it. The point is to try to get the information available at some point of sale or point in their journey from the decision they make that they want to buy until they actually make it, so they get their hands on this information.

We still have a pretty big job to do with builders. I really feel that the builder should have that material in his sales office, which his potential customers can pick up. That's the best place. We are spending money with pamphlets, we go to home shows, we have a newspaper article and our people appear on the stage for new home buyer seminars that take place throughout the province, but still you don't get everybody. It's an ongoing thing.

**Ms Akande:** Might I suggest that since it's mandatory that they belong to the association, it might also be made mandatory that at the time the agreement is signed, the lawyer—

**Mr Ryan:** It's something we should consider.

**Mr Rose:** I'm sorry; I missed that.

**Ms Akande:** I might suggest that at the time the agreement is being signed, if it's mandatory that these builders belong to the association, it should also be mandatory that they give that material to the buyer. Also, it might be an opportunity to do that when they are in interaction with their lawyer, because there's usually a great load of paper around that issue and that might well be emphasized.

The program is extremely good but it's only good if people are aware of it, use it and take advantage of it.

Did you want to respond to what I was saying, because I do have one other question?

**Mr Rose:** I was just going to add that in the survey the chairman referred to, 72% of the home buyers canvassed on that survey had actually seen the guide but only a quarter of them used it as a decision tool. So that shows you. There are other things. Of course the sales people are bringing a perspective as well from the builder.

**Ms Akande:** The other thing I wanted to mention was the fact that a lot of your program deals with prevention, making sure that things are done properly in the first place and changing the standards to make sure that builders adhere to them. That's a tremendous job. Prevention is wonderful, but nevertheless things do sometimes go wrong, and when they do, and when it cannot be settled, even in spite of the guidelines that are laid down, do you not see that there is a role for someone outside the group to make decisions or to help mediate—arbitrate perhaps—or to help bring this to some effective conclusion that is inexpensive as well as effective?

**Mr Ryan:** I guess the CRAT is looked upon as outside, certainly by our organization, and is, I would feel, an independent body that will make objective decisions on the problems before it. I would say also that we have been doing a bit of experimentation ourselves in this whole area of mediation, and have given consideration to whether or not bringing in an outside arbitrator at some stage might be a worthwhile exercise.

We haven't done it yet, but we have introduced additional steps in the process that are in-house; for instance, the senior management group at head office. Sometimes it happens, when you're too close to the situation, that there's a benefit from having somebody more detached look at the problem, and I think the results of the senior management group getting involved have been very positive and quite effective. They've been able to bring to a satisfactory conclusion a number of cases that were scheduled to go to CRAT, but that this not quite independent, but at least more detached group has been able to resolve.

**Ms Akande:** I think that's commendable, but as a final analysis, sometimes there's always the one or two, and I'm just wondering about the effectiveness of an independent arbitrator or mediator when all other resources have been exhausted, whether that role might not assumed by the Ombudsman.

**Mr Ryan:** The Ombudsman of course does have the power to examine what CRAT comes out with with respect to a decision. You're suggesting before?

**Ms Akande:** I'm suggesting that with the agreement of both parties—

**Mr Ryan:** Oh, I see.

**Ms Akande:** —when an impasse has been reached and has been recognized, it might be cheaper and more efficient to involve such a person.

**Mr Rose:** Perhaps I could add to that. The present tribunal process is such that it does not cost the home

owner or the builder any money unless they decide to have counsel, so it is a free process. I think in some ways our people who are trying to negotiate a settlement between a builder and a home owner are almost doing a conciliatory role that might be not unlike that which the Ombudsman or somebody else might come in to do.

Our job is to try to conciliate. Our act is quite clear that this is our job, to try to facilitate a conciliation or agreement, and that the appeal process is there to protect either party that may not like the decision. If I revoke a builder or propose to revoke a builder, he has a right, because I'm proposing to take his livelihood away. With respect to home owners, if they feel they have not had their warranty lived up to by the builder, we're there to mediate and conciliate. It's very much part of our process.

**Mr Ryan:** If I could just make one comment, you know that I mentioned that six in 10,000 cases were going to CRAT. If that number were 200 or 300, then I'd be much more responsive to your suggestion, but it seems to me that a number that low is very strong evidence that the process works.

Often these issues are not clear-cut either. We have a responsibility to the home owner, and in some respects to the builder, because we are not in a position to impose obligations on him where he shouldn't have them.

**Ms Akande:** It's because I recognize that the process does work so well and that there are so few cases that I would recommend perhaps the other, because I know it would be so seldom.

**Mr Ryan:** Yes, right.

1140

**Ms Harrington:** Mr Ryan, thank you very much for coming. I also want to note, because I'm with the Ministry of Housing, the help that both Mr Rose and Mr LeBlanc were at the beginning of September on our hearings for Bill 112. We appreciate your input and we also look forward to next spring when you're going to be working with various agencies plus the ministry with regard to the new building code. That is a good relationship, I believe.

This has been a good opportunity to promote how successful your organization is. I hope some people will be watching and looking for the information that Ms Haeck has held up here that is out there. You've also promoted very well the idea that it's not one cent of taxpayers' money. This is a program that is working for people.

I'd like to come to the question of the role of the Ombudsman. My colleague has asked whether or not there is any role that you can see for the Ombudsman. I think you've answered clearly that you feel there is the CRAT committee, which is a judicial-type body, so I guess the answer to that question is that you don't see a role. Is that correct?

**Mr Rose:** Not until after the tribunal. Once the tribunal's decision is given, as I understand it, there is a right of appeal to the Ombudsman, or with any matter that is dealt with by the minister's office. But we feel that in fact we're almost forming a quasi-Ombudsman role in our present work and that the Ombudsman would be—if the builder or the home owner felt there was an injustice at the tribunal

level, they have the route of going to the Ombudsman or they have the route of going through the court system.

**Ms Harrington:** You've made that clear. I would like to just go a step further and ask if you have any comments you'd like to make on your view of the Ombudsman's office of Ontario and whether or not it is working efficiently and effectively. Would you like to make any comment on that?

**Mr Rose:** Since we've really had nothing to do with it as a program, we couldn't really comment one way or the other. We've not had, as the chairman mentioned in his remarks, that we're aware of, any involvement by the Ombudsman in one of our two client groups, either builders or home owners. We have to be neutral on that, unless perhaps—

**Mr Ryan:** No, I'm afraid I would not like to make a comment without knowing the facts.

**Mr Murdoch:** I just want to thank you for bringing your submission to us today. Not all builders belong, though, do they?

**Mr Ryan:** Well, the law requires that every builder register. Some do not. Even with those who do not register, though, the people who buy a home from them are covered under the warranty act and the warranty program. We pay claims with respect to builders who don't register. We try to catch them. We have a staff of three who move around and try to find homes going up that are not being put up by registered builders, and that's reasonably successful. We take them to court. Sometimes they get fined and sometimes it's a good amount that acts as a deterrent.

I guess what would really help us the most would be if all municipalities would not issue a building permit until they had evidence that the builder was registered and in good standing with the program. Unfortunately, that's not the case. We're trying to improve our linkages with municipalities to get them on side in that way. Hopefully, we'll be more and more successful as time goes on.

**Mr Murdoch:** What happens, though, if the person wants to build his own home?

**Mr Ryan:** No problem. I mean, if you build your own, you're not covered by the warranty.

**Mr Murdoch:** Okay, but that's the way they get around it, isn't it? There's no warranty. Where we run into a problem is somebody—I think Ms Akande said some of the horror stories you hear. If you build your home to get around that and then someone comes along and buys the home, then we're in a bit of trouble, aren't we? That's just where it is. I just wondered if you had any ideas what we can do there.

**Mr Rose:** Perhaps I could just comment a little bit further. There are some people who make it a practice to build a new home every year and sell it.

**Mr Murdoch:** I realize that.

**Mr Rose:** What we try and do is if we can determine there is a trail, if in fact they are acting as builder-vendors, we will take them to court.

**Mr Murdoch:** Okay, I know that happens. Thank you. That's all I have, Mr Chair.



**Mr Ryan:** We were hoping you might have a suggestion that we could use.

**Mr Murdoch:** I think your suggestion is that we work with the municipalities. The municipalities know a lot of the builders who build their own, as I just said, maybe every year. The building inspectors know who they are and they could soon sort that out.

**Mr Ryan:** Yes, that will help.

**Mr Murdoch:** It's good to hear that you're working with the different building inspectors in the municipalities, because I think that's the only way you're going to be able to solve that problem.

**The Chair:** Any further questions and/or comments?

**Ms Akande:** Just one. I live in an older area of the city, Forest Hill, where some of the homes are refurbished. What would happen, for example, when we built our ex-

tension? I know there were inspectors etc, but that would not fall under this at all. This is simply new homes?

**Mr Ryan:** Yes, completely new.

**Ms Akande:** Some of them are really completely new. I think they take everything but the cellar. Okay, thank you very much.

**Mr Ryan:** You've got to be even more careful there than with a new home, when you're deciding who's going to do the work for you.

**Ms Akande:** Certainly.

**The Chair:** Thank you very much. I want to thank you for taking the time to appear before us this morning. I can imagine your schedule is rather busy.

This committee will now stand in recess upon the call of the Chair.

The committee continued in camera at 1147.

#### ERRATA

No.	Page	Column	Line	Should read:
B-7	B-114	1	1-4	The Ombudsman has been accused of pushing around her staff. I've made it very clear at this committee that I'm interested in asking some questions in and around what's been happening internally in that office.
	B-114	2	68	<b>Delete:</b> I have not seen that taking place since this committee has been formed, whether it's the fact that the committee is











## CONTENTS

Wednesday 18 November 1992

<b>Review of Office of the Ombudsman</b> . . . . .	B-159
Law Society of Upper Canada . . . . .	B-159
Allan A. Rock, treasurer	
Richard Tinsley, secretary	
Ontario Public School Boards' Association . . . . .	B-163
Gail Nyberg, treasurer	
Michael Benson, executive director	
Ontario New Home Warranty Program . . . . .	B-167
Reginald Ryan, chairman of the board	
Barry Rose, president and registrar	
<b>Errata</b> . . . . .	B-172

## STANDING COMMITTEE ON THE OMBUDSMAN

- \***Chair / Président:** Morrow, Mark (Wentworth East/-Est ND)
- \***Vice-Chair / Vice-Présidente:** Haeck, Christel (St Catharines-Brock ND)
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- Drainville, Dennis (Victoria-Haliburton ND)
- Duignan, Noel (Halton North/-Nord ND)
- Henderson, D. James (Etobicoke-Humber L)
- Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
- \*Miclash, Frank (Kenora L)
- \*Murdoch, Bill (Grey PC)
- Perruzza, Anthony (Downsview ND)
- \*Ramsay, David (Timiskaming L)
- Witmer, Elizabeth (Waterloo North/-Nord PC)

### **Substitutions / Membres remplaçants:**

- \*Abel, Donald (Wentworth North/-Nord ND) for Mr Duignan
- \*Harrington, Margaret H. (Niagara Falls ND) for Mr Perruzza
- \*Mammoliti, George (Yorkview ND) for Mr Johnson

\*In attendance / présents

**Clerk / Greffier:** Carrozza, Franco

**Staff / Personnel:** McNaught, Andrew, committee counsel and research officer, Legislative Research Service



B-13

B-13

ISSN 1180-4300

## Legislative Assembly of Ontario

Second Intercession, 35th Parliament

## Official Report of Debates (Hansard)

Thursday 11 March 1993

### Standing committee on the Ombudsman

Annual report, Ombudsman,  
1991-92

## Assemblée législative de l'Ontario

Deuxième intercession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Jeudi 11 mars 1993

### Comité permanent de l'ombudsman

Rapport annuel de l'ombudsman,  
1991-92



Chair: Mark Morrow  
Clerk: Franco Carrozza

Président : Mark Morrow  
Greffier : Franco Carrozza





### **Table of Contents**

Table of Contents for proceedings reported in this issue appears on the outside back cover, together with a list of committee members and others taking part.

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### **Table des matières**

La table des matières des séances rapportées dans ce numéro se trouve sur la couverture à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et d'autres personnes ayant participé.

### **Renseignements sur l'index**

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE OMBUDSMAN

Thursday 11 March 1993

The committee met at 1005 in committee room 2.

### ANNUAL REPORT, OMBUDSMAN, 1991-92

**The Chair (Mr Mark Morrow):** I'd like to call the standing committee on the Ombudsman to order. This morning we have appearing before us Roberta Jamieson, the Ombudsman of the province of Ontario. Welcome, Ms Jamieson. It's always a pleasure to have you here. You've been scheduled at 10 o'clock this morning until 12 and again at 2, if necessary, if you feel like it. Begin when you're ready. I understand you probably do have some opening remarks that you'd like to make, and please, if you would, leave some time this morning so that the members can ask you questions and/or comments.

**Ms Roberta Jamieson:** Good morning all, bonjour, sago. Nice to see everybody. I will not make a lengthy opening statement for members today. I would like to put the report that we're going to discuss today in some context, however. It's the third report I've worked on as Ombudsman.

The first one I reported on, most of the year was my predecessor's work, so my part of it was really to set the stage for my term.

The second report outlined in a bit more detail the approach I wanted to bring to the office as Ombudsman. I published for the first time a mission statement of the office. We tried to make the report one that was more accessible for the public. Some of you may remember that we experimented with using people's pictures, making it more readable and so on. We set out in the mission statement the approach of conflict resolution, a win-win resolution; that I propose to take preventative ombudsmanship, introduce that concept; and for the first time we analysed complaints according to what it was people were most concerned about, the top 12 issues. So that was the second report.

In this third report, which we're here to discuss, again I tried to make the format, the print and so on, so that it was more accessible for the average reader, as well as useful for the Legislature. It is a report that attempts to say: "We are implementing the mission statement. This is what we've done, these are the trends we've seen, these are the obstacles we've found and here's our record."

I started out with a message that made comments on some of the trends I was seeing in the complaints. We reported on our activities in public education, our efforts in outreach and increasing access and the increased use of district offices. I talked about the particular challenges I found in the north when I travelled, particularly to the isolated communities up the James Bay coast. I talked about the title Ombudsman. I talked about what we were doing internally to increase our efficiency in dealing with complaints. I talked some more about preventive ombuds-

manship and what that means. I tried again to give an indication of the kinds of cases we deal with, ordering them again under the top 12 headings of areas of complaint, and there gave a representative number of examples which really run the gamut of the entire bureaucracy and a number of the agency, board and commission tribunals that I deal with as well.

I then went on in the report to devote a special section to a special investigation I'd conducted on the Human Rights Commission. I also included a section on jurisdictional matters. You'll recall this committee requested some time ago my views on this subject. We did study that area and I've included in the report a statement on jurisdiction. I dealt with a particularly perplexing issue proposed by the current provisions of the Freedom of Information and Protection of Privacy Act, an issue that remains outstanding. I'd be happy to discuss that with you further. I could certainly use any intervention legislators might wish to make on this question.

I then tried to give some excerpts of things I was saying around the province about the job, about the work, and so on. I gave a bit of a section on what other ombudsmen are saying in Zimbabwe, Mauritius, England, Poland, Israel, Guam and elsewhere in the world, because it is an international community that I'm a part of.

The statistical information that took the over 33,000 complaints and inquiries I receive each year and broke them down in a way which I hope was helpful—I certainly think we can improve in the way we represent statistics and we're looking to do that.

Expenditures, a listing of the Ombudsman's staff, the staff I rely on and who are so good at what they do; professionals in this field.

Finally, the mission statement in a much briefer version, just to remind myself and everyone of the standards against which I'm prepared to be held accountable.

I think I'm going to stop there and address any questions members might have. I hope to be able to answer them today. If I can't, I'll certainly undertake to get back with the answer.

**The Vice-Chair (Ms Christel Haeck):** Thank you, Ms Jamieson, I'll open it up to questions. We've tended to be not necessarily as precise as some committees in allotting time, but we'll go around the room and I will ask the Liberal caucus to—Mr Ramsay, did you have some questions?

**Mr David Ramsay (Timiskaming):** Sure, I can start off. Welcome, Ms Jamieson. Nice to see you again. Thanks for coming to the committee today. It's great where we are finally here together to talk about your report and we certainly are eager to discuss it.

I will start at the beginning. I have a question on page 2. You talk about the awareness and outreach of your office and



how important that is, and talk about the campaign you had launched. I was wondering if you've done any sort of follow-up study, any evaluation as to how effective that was and what impact it might have had upon your office.

**Ms Jamieson:** Thank you, Mr Ramsay. You're quite right, increasing awareness is something that has been very important to me and we did an opinion survey over a year ago just to see what the public knew about the office, whether they were using the office and what it is they wanted to know more about. I had some of my suspicions confirmed and I learned a lot. I learned that the more vulnerable you are, the less likely you are to know about my office; the more likely, however, you are to have interaction with government and have complaints about government. The more educated you are, the more likely you are to know about us. I found out that I had quite a job to do to let people know the Ombudsman office exists for them, that they can make a difference and how to access us, and I wondered how to go about that.

We've done a few things. One is to have the district officers go out and do more public education, as well as intake clinics in community centres out and around the province. Specific to this area, Toronto and the Golden Horseshoe, as you know, 52% of the population of Ontario is here and we wondered how best to reach them. There's only so much you can do by publishing annual reports and giving speeches.

We took a first step by doing a six-week campaign to raise public awareness. We did some media interviews, we did some billboards, we published new materials. I've heard a good deal about the materials, all constructive comments which we've taken to heart for future campaigns. But in terms of impact, this is a very difficult thing to gauge, because it's not as though there are millions of people sitting out there waiting to rush to the Office of the Ombudsman to launch their complaints.

We knew going at this that we were really filling a knowledge gap. Like those magnets you stick on your fridge that say, "Should you need to call the fire department or the police, or whatever, here's the office, here's the number," that's really the knowledge gap we were trying to fill.

I didn't expect thousands of people to stream into my office to lodge their complaints. I suspect we will see over time how effective it's been. We are trying to keep up-to-date statistics when people come to us: "How did you hear about us? Did your MPP refer you? Did a government official refer you? Did you know about us from before or did you see that campaign?" Right now we're nearing this year-end. I'm going to be tabulating the numbers of complaints and inquiries. That too will be a factor. I hope I've responded to your question.

**Mr Ramsay:** Yes. I guess there was a bit of an expenditure, so I was wondering if you would have done a little more exacting evaluation just to see if you felt it was effective, but I guess, as you say, until you tabulate your cases—you're right too, it's not like other types of advertising campaigns. When you're trying to create demand, if the demand's not there—it may be later on. Maybe you've

planted the seed that there is an avenue of recourse and it's to come to your office. So you're right, maybe only over time.

I was wondering if you have considered other ideas to get the message out about what your office does, because we on this committee are very sympathetic to this, that there must be a better awareness in the general public's mind about your office. Have you looked at other ways in which we might be able to communicate what you do?

**Ms Jamieson:** Yes, I have. In fact, that's been a primary area of focus for me. I'll review a number of the things we've done.

One is that I have moved to resource-staff my district offices, of which there are nine, with two people in each district, and I'm almost finished that; I'm two short at the moment. We call them district officers, and their jobs are really twofold: Part of their job is to do public education, and the other part is to take complaints.

I've also had them develop, both there and in Toronto, where we have also now developed that capability—we never had it before. Before that campaign a year ago, we did not do outreach strategic public education at all. So that was really a first step. We're doing much more of that now. At the time of writing of this report, we had developed strategic public education plans for each of the districts and for Toronto. I don't want to pre-empt my own next report, which I'm writing right now, but I can tell you we're a way along in that.

Part of the strategy has been not just to go out and tell people that we're there, come back, leave the office open 9 to 5 and wait for people to come to us. In some places we go out and hold monthly intake clinics in community centres; we go to Indian friendship centres; we go to communities and centres that people with disabilities would frequent. So we are trying to be out and about and not waiting for people. That's part of the strategy.

The other part is that we looked demographically at the province. We looked at where the inmate population is concentrated, for example, and where we have a heavy concentration of aboriginal peoples, where we have franco-phone people in the province, where that concentration is, so we could inform our own strategy and meet those demands as required.

They're ambitious plans. They do demand resourcing. So far, we've been accomplishing them on existing levels and so far I have not sought additional staff to do it. So I would say we're at the beginning stages, but it's an area of high priority for me.

1020

**Mr Ramsay:** I want to talk about the next point you just alluded to when you said you hadn't hired new staff to do it. A concern I also have would be a sense of balance in priority-setting within the operation, certainly for the allocation of resources; that as you increase the outreach efforts, which we all agree need to be done, we all want to make sure we still have maximized the resources towards problem resolution. I guess it has to be a balance. We wouldn't want to take away resources from getting problems solved for people.

Coupled with that, in the outreach, would you maybe be attracting people to come to you before they have exhausted all avenues of appeal? I think it's important that people understand that you're the last avenue of appeal, that they should follow through whatever process they're in till the end and then come to you. They shouldn't come to you early in the game.

**Ms Jamieson:** I understand your concern. That's why I want to make clear that when people go out, it's not only to deliver a role and function about the office, though that's a very important part of the job: to let people know what we do. We are very clear that we are the place of last resort, when we do it. But the other part of the job, when you're out there, is to sit down and take complaints. There are the exceptional public outreach activities where that doesn't happen.

When I went up the James Bay coast or wherever I've been in the province, at the end of the discussion there is usually a lineup of people wanting to talk to us. For some of that, we give useful referrals: People don't know when they've exhausted their last resort because they don't know about all the levels of appeal, so we tell them that. We say, "You've got two or three things to do yet, and if you're still dissatisfied, we're here for you." We share information so that they use us appropriately the next time.

There are inevitably people in that lineup who have reached the end who are very pleased to hear there's someplace left to go and who will sit down and give you their complaint onsite. Frequently, my staff are able to resolve those complaints fairly quickly. Early on, when I did a take on, "Well, how successful are we at resolving complaints?" I found that 70% of the complaints and inquiries that come to us are resolved in the district offices.

You're right. The balance needs to be there between educating people and resolving complaints, but I think we're reaching the end of that. You can only reprofile your staff so much before you're saying, "No, I really need something more."

The last thing I want to say is that I really think it is part of the job that, if you're going to say you are a public office, you're there for the public. You can't say it with a straight face when you're out there telling people you're available to them unless they have some way of knowing that, and that takes deliberate strategic activity. We're trying to use our resources wisely in that regard.

**Mr Ramsay:** I just have one more question in this area. As you know, our committee has been looking at the legislation in regard to your office; we're all very seized with this as being a problem, for sure. I suggested to the committee yesterday, why don't we make it mandatory in government offices, like in the welfare system, that if you're not happy with the decision you have received from a government official, you should be notified of what your total avenue of appeal is in regard to that agency or ministry? That way, people would know immediately, when dealing with any government official where they're not happy with the outcome, what to do next, whether it's to go to the manager or head of the department in whatever agency. Included in that would be the total avenue of appeal

they would have. Of course, your office would be there at the end; the phone number would be there.

This list would either have to be given orally over the phone, or if in person, like in the welfare offices, there would be the piece of paper that would say, "You can appeal to this board," so that people knew at the point of contact.

I think you're right that people don't know. They get what for them is a negative decision from a government bureaucrat and they go off and don't know, until maybe they fall into one of your outreach meetings or see an ad, or maybe it's too late and they've forgotten about it and don't follow it up. Maybe they should know at point of contact what their recourse is. I was wondering what you thought of that. Would you see it as being helpful to your office if everybody knew they could come to you eventually?

**Ms Jamieson:** Certainly. I think any way of increasing the public knowledge about their levels of appeal would be helpful. Many government departments do that, frankly, and we get a number of people referred to us by government employees who say to people: "I've done everything I can do for you. Now there is this office."

To get that relationship with the bureaucracy, it's a very interesting balance we have to strike between saying, "We're not afraid to call them as we see them," but also being there as a creative resource to find answers that will benefit both the person with the complaint and the government employee to do a better job, which we assume all government employees are interested in doing.

The only thing I would ask you to think about is that there are a lot of reasons why people come to us. First, they may know the avenue of appeal. Let's talk about those people for a moment. There are many people who don't, but there are some people who do know the avenue of appeal but want to talk to us so that they feel more powerful in approaching the avenue of appeal. We're not an advocate for people and we make that very clear, but it's also very true that the average member of the public does not feel very powerful when dealing with government. Sometimes they want the comfort of saying, "I've called the Ombudsman office" before they meet the government official. That's a reality I don't think is likely to go away very quickly.

The other thing is, we have to look at the changing demographics of this province. There are many recent immigrants in this province and many people coming from countries where complaining is not a positive thing to do; as a matter of fact, it's a very dangerous thing to do. So there are many people who, I suspect, will be on the receiving end of a government decision and go away and will not ask a government official, "Where's the avenue of appeal?" or may not even express dissatisfaction. They may get the letter in the mail and do no more because they feel helpless and they feel it's pointless.

However, if they know they can approach an office like mine without fear—I'm not saying there's good reason for their fear in Ontario; I don't think there is. But in their life experience it might be a pretty scary thing to say, "I don't like what government's doing." If they know they can access my office, speaking their language—I undertake to



make the services available in the language of choice—they also may feel we'll say to them, "Look, you can complain. It is a positive act. It will not be received negatively. Go here. If you're still not satisfied, yes, you can come back to us, but try this first," and encourage them to do that, and we do.

1030

**Mr Ramsay:** They might feel more comfortable, then, if they automatically got a notice stating their avenue of appeal. If that came automatically with a negative response from government, that might—

**Ms Jamieson:** Let's say they'd have the knowledge. I think you still have a challenge of whether people would indeed feel it was real, if they could make a difference. It would also depend on the degree to which they understood what was being sent to them in the mail. Let's face it, many, many people in the province do not speak English or French.

**Mr Ramsay:** It would have to be multilingual, yes.

**Ms Jamieson:** There are other dimensions I would ask you to think about, but in general, anything that will increase the public knowledge about their avenues of appeal I think would be positive. That's as far as I would go in the hypothetical. I'd very much like to see the outcome of what you recommend and would be happy to respond at that stage.

**Mr Ramsay:** Good. Thank you very much.

**The Chair:** Mr Mammoliti, if you will, please.

**Mr George Mammoliti (Yorkview):** Good morning. Thank you very much for coming. I'm going to go back to an old topic that you're probably sick of in terms of it coming out of this member's mouth, but a topic that I think is very important. You actually touch on it in your report in terms of human resources and how important that is to you, that your office provide equality and equity and respect and freedom from discrimination and harassment.

I tend to wonder, after looking at a number of letters that have come through either this office, the Chairman's, or mine, either at the constituency level or at the Queen's Park level, in terms of the problems that exist within the office and the consistency in those complaints, that your office doesn't provide for equality, equity, respect, freedom from discrimination and harassment—as a matter of fact, the letters will tell you the complete opposite, that individuals are frightened to be there and are afraid to work there and are actually at this point demanding that this committee get involved in some capacity in terms of intervening.

I'd just like to read for a second the latest letter that has reached my desk. Of course this one, like many, is anonymous. I must say that we've got to weigh that as well, but in terms of the message and it being consistent with the rest of the letters that have come, I think we have no choice but to look at the content of the letter.

"We, the staff at the Ombudsman's office, feel the committee should be aware of the goings-on in the office. Each of us are afraid day to day of our positions, which is a very stressful state to work under. This office, over the past three years, has deteriorated more than the committee

knows. During this period, approximately 100 employees have either been let go or left because of working conditions. With a staff complement of 125 employees, this is an unreasonable turnover. Some of the employees who have lost their jobs have worked with the Ontario government for more than 15 years and up to 26."

At the end of the letter it says: "This office is a hell-hole to work in under the current leadership. Please help."

Here we have the leader of the office telling us that things are going smoothly, that this is what you want to accomplish through these reports, that your management has proved to be positive in terms of the level of service that goes out as well as improving staff morale; on the other hand, we're getting signed and anonymous letters being very specific and consistent in that they are frightened to be there and that there's a problem internally.

Are you aware of any of these problems and, if you are, have you tried to rectify these problems since the last time I made you aware of them? As well, if the numbers are correct and if there have been more employees let go since the last time we spoke, could I please have the numbers in terms of severance packages and how much it's costing the Ontario government to let those employees go?

I know I asked for that a few months ago and you were kind enough to send that to our committee, but I'd like to ask for another group of numbers so that we can get an indication of how much that's costing the taxpayer. That's the first question.

**Ms Jamieson:** I thought, Mr Chair, that we were beyond this. I thought that we had moved forward in our relationship. I'll answer the question as best I can.

**The Chair:** Just let me clarify before you answer. I looked at the situation when Mr Mammoliti was asking his question, and in context of the report, he is in order to ask the question.

**Ms Jamieson:** This is not a challenge; it's not a point of order.

**Mr Mammoliti:** I was just trying to clarify the situation—

**Ms Jamieson:** No, Mr Chairman, this is not a point of order. This is a statement that I thought we were beyond this discussion. However, I'll answer the question this way. I will be as constructive and as positive as I can be in responding to the question because that's the kind of relationship I am here to build with this committee.

I will say that I would consider it very unprofessional of me to respond to anonymous allegations at any time. When I take a complaint about government action I don't take anonymous complaints. That's right in my act. I must deal with complaints which are clear and which one can professionally deal with.

I also would like to say that this is really the first time I've heard any of these letters. None of them have been forwarded to me, despite requests that I made some considerable time ago to meet privately with members to receive any. I have received none.

I also would like to say that in any organization in the present climate undergoing significant change, and I would class the Ombudsman's office, along with many,

many others out there in the public sector, as being one of them, yes, there are stresses; yes, there are changes; yes, there are frustrations. Sure, there are some unhappy people; there are unhappy people everywhere, in everyone's office. Now what is available to those people to make sure their issues are dealt with? Are there mechanisms available? Is there fair access to them?

I have told this committee on two occasions and provided a copy of a grievance procedure that's available in my office. It continues to be available. I even quoted statistics on the extent to which it had been used. It is above and beyond any grievance procedure I believe available to any member of the public sector because it provides for appeals internally and appeals to outside arbitration, outside the Office of the Ombudsman. That is available to any staff member who is not happy with what is happening.

1040

The other thing I would like to say is that the issues that concern Mr Mammoliti, which he has raised once again, I have yet to see any substantiation of them, any facts, any anything, and I will not engage in myth-making today about those things. I would like to let members know about two things that are happening.

One, you well know that the auditor is conducting, at my request and with the agreement of the public accounts committee, a value-for-money audit. He will undoubtedly look at this area. He's conducting it on the basis of this fiscal year we're just coming to a close on. I had that discussion with the public accounts committee. If the concern is about expenditure of taxpayers' money and those kinds of things, I feel confident the Provincial Auditor will look at that, and should he feel there are issues that need to be raised that cause him serious concern, I trust he will raise them, not only in the context of the report he makes available to me but also in his annual report, if he feels there are issues. He always has done this.

The second thing you should be aware of is that my staff and I are about to embark on an exercise in collective bargaining. With the passage of the changes to the Labour Relations Act, which made it much easier for people in this circumstance to organize, to unionize and so on, that is exactly what my staff have done. They've exercised their rights to do that and they've organized. Many of these issues, if there are such issues, will have an opportunity to be raised in that context. I think on two counts, those issues are dealt with or have a forum to be heard.

I will not reply to anonymous comments. I don't think it's appropriate in light of the developments to exercise my discretion to share any further information with this committee on that subject. I'd like to respect the processes that are in action at the moment.

**Mr Mammoliti:** As a follow-up, Mr Chair, first of all let me say that in terms of the collective bargaining procedure, if there is going to be a procedure, that's good news in a sense. If there are problems, perhaps this may be the way those problems would get resolved. So that's good news. This is the first time I'm hearing about that and I'm glad.

**Mrs Elizabeth Witmer (Waterloo North):** It's in the letter.

**Mr Mammoliti:** Yes. It's the first time I've actually heard about that, and it's good. I'm glad to hear that.

The other issue is, of course, the dissatisfaction with what you've said in terms of providing me with perhaps some more figures in terms of who has been let go or how many people have been let go since the last time we've spoken and how much that's going to cost.

I appreciate the fact that the auditor is doing his thing, but I also have a responsibility on this committee and I'd like to find those numbers out at first hand. I'd like to ask you again to consider giving me those numbers and request that again. Would you reconsider and give us the numbers in terms of how many people have been let go since the last time we spoke and how much that's going to cost?

**Ms Jamieson:** I'm going to avoid the temptation to go back to our earlier discussion of what is the role of the Ombudsman and what is the role of this committee. I will only say that it may be instructive to review section 8 of the Ombudsman Act. I'm not sure whether you have that in front of you. Internal operations, particularly staffing, are a matter that the act reserves to the Ombudsman. It is inappropriate for me, I believe, to entertain this question further.

**Mr Mammoliti:** Mr Chair, I'm going to look to you for some advice on this, because even though I've been here for a couple of years, I think I've still got a lot to learn in terms of procedure in committee. I would think there's an obligation at this point for the Ombudsman to provide this information after one of us has asked for it. If I need to put this in the form of a motion that would ask the committee to ask for this information, I'd be willing to do that. If that's not the way to get this information, then I'd like for you to perhaps explain to me how I would go about getting that from the Ombudsman.

**The Chair:** I've ruled once, Mr Mammoliti, that your questions are in order, that the human resources, the Ombudsman's report for the year, the expenditures—you can ask questions on that. The Ombudsman is free to answer or not to answer.

**Mr Mammoliti:** In light of that, I'm going to ask one more time: Will the Ombudsman reconsider and give me the information I'd asked for in my latest statement?

**Ms Jamieson:** I'll try once again to be helpful. The Board of Internal Economy, as you know, reviews my estimates. Every party's House leader sits on that board. All parties are represented and the Speaker chairs that committee. They review my estimates. I have also undertaken to table with that board a copy of the auditor's report at the conclusion of the value-for-money audit. I think there is a way for members, I would suggest to you, to access that information. I can't conceive of a value-for-money audit that wouldn't look at these kinds of questions.

I have no further comment to make on this, Mr Chair, except to say that I'm trying hard to be constructive but I really take issue—



**Mr Mammoliti:** Mr Chairman, I was hoping this information could reach us before this afternoon. I'm hearing that this information is not going to be given to us at all and I think my rights perhaps as a member of this committee are being destroyed at this point. I need to ask some questions around this area and I need this information to be able to do it.

I would like this information before the end of the day so I can resume my questions to the Ombudsman. If this isn't going to be, Mr Chairman, then frankly my questions aren't going to be answered and I can't wait for the auditor's report. I want to know about this information and I'd like to know at first hand from the Ombudsman. Mr Chairman, should I put in a motion that would ask the Ombudsman to go back and dig up this information for us?

**The Chair:** Mr Mammoliti, if you want to move a motion, that's entirely up to you. You have the right in this committee, as in any committee, to ask the questions of your choice, but you also have to understand that deputants appearing before us have the right to answer them or not.

**Mr Mammoliti:** Okay. I move that we, as a body, ask the Ombudsman to provide us with the number of individuals who have either resigned or have been let go since the last time I asked this question, and the amount of money this will be costing the provincial government and the Ombudsman's office.

**The Chair:** Do you want me to read the motion to you? Any comments or questions on Mr Mammoliti's motion?

**Mrs Witmer:** I'd just like to indicate that I will not be supporting the motion, because there is going to be an audit done of the Ombudsman's office and I hope that in the course of the audit all that information would be available to us. I personally thought we were going to deal with our report. There's some excellent information here and I think it's time for us to move beyond where we've been and deal with the future of this committee and the future of the Office of the Ombudsman.

**The Chair:** Further questions and/or comments?

**Mr Tony Rizzo (Oakwood):** I would like to ask just a question to her to clarify.

1050

**The Chair:** We are now dealing with Mr Mammoliti's motion.

**Mr Rizzo:** I'm talking about the motion because there may be more information I can get from her that would encourage me to vote for or against the motion.

**The Chair:** Speak only to the motion, please.

**Mr Rizzo:** Who can give me an answer? Should I ask him the question then? I don't know how to decide. I want to know if this information is available right now. Is it public information right now? If it is, why aren't you volunteering to give that information? If it's not, then when are we going to have that information available through an auditor's report?

**The Chair:** Thank you. Any further questions and/or comments?

**Mr Mammoliti:** I might add, Mr Chairman, that the last time I asked for this information the Ombudsman's office was kind enough to give it to us before the end of the day, so I can't understand why the Ombudsman's office and the Ombudsman are refusing to give me that information at this time.

**The Chair:** Mr Murdoch, please.

**Mr Bill Murdoch (Grey):** I think Tony has a very good question. He just asked, "Is it available now or isn't it?" or, "When would it be available?" I don't think there's anything wrong with that question. I think you should answer it. I mean, that shows him the way he wants to vote. Maybe it's not available.

**The Chair:** Ms Jamieson, do you feel like answering Mr Rizzo's question at this time?

**Ms Jamieson:** Sure. Is it available publicly? No, it's not a matter of public record. The Ombudsman Act reserves to the Ombudsman in section 8—it's one of the things the Legislature did in ensuring that the Ombudsman had independence to act. They said the Ombudsman will be appointed for 10 years. The government can't cut the Ombudsman's salary. She will lease such premises as she feels necessary, and staff in terms of employment as are necessary. These were all checks and balances put in the act to make sure you had someone free and willing and available to call them as she sees them, to criticize the government in an investigative finding if that was necessary, without fear of reprisal or any action like that.

There is an audit done every year on the books by the Provincial Auditor under the act. He usually looks at financial transactions. This year I have asked him to look at more than that and to look at value-for-money audit, which the public accounts committee and I have agreed is something that will be done at the conclusion of this fiscal year. He will then provide the report to me as he's obliged to do under my act. I've undertaken to give it to the Board of Internal Economy and that information can be accessed through the Board of Internal Economy in that fashion.

I want to make it very clear to the member asking the question that we have had lengthy discussions, myself and the committee, on the role of this committee vis-à-vis the Office of the Ombudsman. The role of the committee is not to be the board of directors of the Ombudsman or to oversee the day-to-day operations of the Ombudsman. The act makes that very clear. Because there were so many myths swirling around last summer without foundation, without fact, without substantiation, I, in an effort to dispel myths, used my discretion to make that information available to this committee.

I think events have now moved beyond that. I had hoped the relationship with the committee had moved beyond that. We now have a value-for-money audit happening which will provide an opportunity for those questions to be asked and answered by the appropriate people. If there are any doubts in any members' minds that there are problems, then there's an opportunity in the collective bargaining context to deal with those as we look to the future. So I think there are two ways the concerns that

have been expressed can be addressed if there is foundation for them. I hope that's helpful.

**The Chair:** Before I move on to you, Mr Murdoch, I'd like to acknowledge Hugh O'Neil, the member for Quinte, and some guests that he's brought into the room. Welcome, and good morning.

Mr Murdoch, please.

**Mr Murdoch:** When I asked the question before, Roberta hadn't said some of the things that she's continued to say, so this sort of answered some of my questions because we did get that information. That's what I was going to ask you, if we did get it before, and I thought we did, and you said we did, so that answered that question.

This is what this committee's whole problem is, though, with you sometimes—not you per se but with the Ombudsman's office. Some of our members get frustrated, and in this case George would like to know some information, and whether it's valid or not, he's requested it. I hate to see it go even in the form of a motion, because you can still ignore the motion, but if it passed, then what it does is put this committee into a conflict with you again, which I don't want to see, because we've got to work together. I think before we're done today on this report there are some other things and I hope we can get together to work. So we don't need this kind of confrontation and I'd hoped there would be some way we could resolve it without even taking a vote, because there again I don't know where that'll lead.

As I say, I don't know where to go from here, other than I know what you're saying. This allegation that was just read into the record was unsigned. I believe there are some that are signed and sometimes there are other ones, and I agree with you, in a lot of cases you can't deal—my office is the same way. If I get complaints that are not signed, I file them where nobody else will find them either. But when you do get them, sometimes you have to deal with them. In this case, I think, when we're here, George is asking for some information.

Is it really that hard to get that you couldn't send it to him? Maybe I'm off topic a little bit. I'm still talking to this motion, but is there not some way we can try to get along and help George with his concerns, because I think he's really serious about this, and I don't think he's looking for trouble. He's just trying, in his own mind and maybe some of his own constituents—I don't know—to solve this problem that we do have.

We're always going to get complaints about all kinds of government offices. That's always going to happen and we're always going to have them, but we'd like to be able to deal with them. I just try to appeal to you that maybe you could do that, if it's that easily available. I don't know. I'm just trying to solve this problem so we can go on with some more constructive business.

**Mrs Witmer:** Call the question and get on with it.

**Mr Murdoch:** George wanted to say one more thing, I think.

**The Chair:** The question is called. That's it. I'll read the motion out.

**Mrs Witmer:** I'd ask for a recorded vote.

**Clerk of the Committee (Mr Franco Carrozza):** Mr Mammoliti moved that the committee ask the Ontario Ombudsman to provide us with a list of the numbers of individuals that have been let go and the amount of money paid to them.

**The Chair:** All those in favour?

**Ayes**

Frankford, Mammoliti, Murdoch (Grey), Rizzo.

**The Chair:** All those opposed?

**Nays**

Abel, Drainville, Eddy, Haeck, Miclash, Ramsay, Witmer.

**The Chair:** Motion denied. Okay, questions and/or comments?

**Mrs Witmer:** I'd like to turn now to another topic. It's still the outreach, but I know you've taken some steps to ensure that the public is more aware of what the office is able to do and also what the members are able to do. Do you have any statistics at all that would indicate to you that more members of provincial Parliament are referring constituents to you? Do you have numbers or any indication?

**Ms Jamieson:** I actually don't have numbers with me today, but I can tell you that I have witnessed, as I've said, I think, in this report—on page 4 I say there's been improved communication and an increase in numbers.

One of the things that I did early on was go round and meet with each caucus, because I knew there was a whole host of new members in the Legislature after the last election, and talk about the office. The other thing we've done as officers of the Legislature, all of us, the conflicts commissioner, the auditor and so on, is hold information sessions—the Speaker's hosted them—to let members know. I've also had my staff hold orientation sessions for constituency assistants, and I hope to do more of that.

Yes, I think the contact is increasing. I think with the ones that are referred now there's a very clear communication of what we can and cannot do. Some members indeed even come with their constituents, as Mr Murdoch did very recently, and I know this is on the increase and I'm pleased to see it. I haven't brought the numbers with me. I suppose I could dig that out if that would be helpful.

1100

**Mrs Witmer:** I just know that within my own constituency office my staff are now aware of the ability that they do have to make referrals to you if all else has failed. I'd like to ask you about that, because I have to tell you, when I was reading through the report yesterday, there are examples of cases that you deal with that surprise me, because my staff deal with many of these issues. I guess I'm wondering why some of these issues were not dealt with within the MPP office and why you would become involved at such an early stage, because my staff does the majority of these cases in Waterloo on our behalf.

**Ms Jamieson:** It doesn't surprise me that in the member's office many of the complaints are similar in nature. We often will ask people who come to us: "Have you approached your member? Have you dealt with your



member?" There may be reasons why members of the public would not do that first, whether they are of a different political persuasion, whatever the reason may be. That of course is their option, but we do ask them whether they've gone to their member and let them know that their member is there to do things like this.

I am very clear that members take up and resolve complaints from their constituents every day. What the Legislature has done in creating the Ombudsman is to say: "We have a special need here. We need a place of last resort that's independent of government and that has extensive investigative powers, so we're going to create it and give that to the Ombudsman."

Many members will say: "I've gone as far as I can. This needs a formal investigation. I don't have the resources to do that, but the Ombudsman does. Go to her."

I try and work cooperatively and, where possible, we do say: "Have you talked to your member? This is something your member could help you with." In that way I hope we're complementing one another.

Let me also say though, lastly, that by the time people get to my office, they've had it, usually. They are very frustrated and they have been through all the channels of government and have been turned down and are coming to us as the place where they hope they can get some help.

If the answer is again seen to be a bureaucratic one of, "You're in the wrong place; go over here," it is sometimes not well received. So I ask you just to keep that in mind as well. If it's something we can do, and do quickly and do simply, we will. We may use the opportunity to educate them that something like this, in future, they might take to a member or avenue of appeal and use the opportunity to educate.

**Mrs Witmer:** I really think that is important. Maybe it's because of my time as a school trustee, but there are steps that individuals need to go through. For example, before they used to be able to come to the school trustee, they'd go through the principal and the superintendent and what have you. In the same way now, I tend to be very careful if people come to me with a municipal or school issue. I direct them back to the appropriate level of government.

I am a little bit concerned that many of these problems are not that serious, and I think we sometimes have been able to resolve them ourselves within our constituency office by one phone call. Even though the individual can't get through the red tape, our staff are able to, or were able to. I would hope that you will continue to encourage individuals to deal with the appropriate level of government, because I see the function of the Ombudsman as the place of last resort. Certainly any issues that we send your way are because we've spent a lot of time and we can't get anywhere and all the avenues are exhausted.

We had some discussion around the title of "Ombudsman." I know you've indicated that we should be creative and we should look for another title. However, I have to tell you that at the end of our discussion, I think we basically came to the conclusion that the best title was still Ombudsman. "Public protector"—we could see you in the

Batmobile and what have you, and we didn't like the connotation of "complaints commissioner."

We were also concerned that a lot of money has been spent in advertising recently and making the public aware of the role this should have. If we were to change the name now, there might be some confusion. I would really like to hear your comments.

**Ms Jamieson:** I was speaking at the faculty of law at the University of Windsor the night before last and I was asked this question again. There isn't one public function I have been to, certainly in the last 18 months or perhaps longer, where this issue wasn't raised with me as a question from the floor or privately. I've had this discussion about it with my colleagues, including the Swedish Ombudsman, and it is a concern. People view it as a sexist title, and I've researched this.

I used to say that frankly, it's a Swedish word and that's why it's "Ombudsman." Well, then I dug deeper. If you look at the root at end of the word, it has the same connotation as "man" in mankind, so that explanation frankly doesn't wash. It is also very difficult to pronounce. At almost every public function I'm at, I meet people who cannot pronounce it. It's often the person introducing me, and I don't blame them. They can't get it; they can't wrap their tongue around that, so it's a difficult word for a few reasons.

All right, so what do you change it to? Some universities have used the title "Ombuds." Now we're getting to the stage where that really doesn't mean anything. It's not a Swedish word, it's not an English word, it's not an anything word. Others use "Ombudsperson." The only problem with that is again, that is half an English word, half a Swedish word, creating a new language and it's more difficult to pronounce than "Ombudsman."

I'm not sure that's the solution but I know there should be one, and I'm collecting alternatives from people because everybody who tells me, I say: "Call your MPP. If you're going to change it, it needs an amendment. Until then I'm stuck with it." I have people who still introduce me as "Ombudsperson" because politically they will not say "Ombudsman." Some of them I've collected are parliamentary commissioner, public protector.

I have the same issue. "Public protector" definitely smacks of advocacy in the face of massive unfairness. I would look for something more neutral in tone that gets the essence of the office across. One of the titles I'm thinking about lately is public mediator. What does that do? That says you're available to the public but it says the function is mediation. You're between government and the public. That's the job: Find a solution between the two, and it kind of has the essence of the role in it. I'm not pushing that in particular but it has a certain appeal.

I do know that we need to find a title that means something to the Ontario of this decade and indeed of the next century. We are a changing population. We have many people from many parts of the world in this province and we need an office that will capture the spirit of the job in a way that we can all understand and share, and that's the challenge.

**Mrs Witmer:** I guess it appears there hasn't been a satisfactory alternative provided at the present time, and obviously those people who share that position throughout the world haven't even been able to determine what is most appropriate.

**Ms Jamieson:** To be frank, we're talking about it. But I'll tell you that the same views about sexist language that manifest themselves on either side of the debate are very much alive in the Ombudsman community. At the last meeting, I can tell you there were maybe five females in the world who hold the post. We're talking about this subject and some people have a certain affection for the term because of the history of it.

You raised the question of confusion and money. Confusion: I don't know. "Ombudsman" is confusing to a lot of people, particularly if you can't pronounce it. Money: Is it going to cost a whole lot of money for me to produce a whole lot of new material? I have run out of the public education materials we did last spring, frankly, and have just had to have some more printed, minus the cover that was so talked about last year. It talks about: Do you have problems with provincial government organizations? So we have a demand for public education materials that's ongoing. If the title were to be changed, it would be a matter of phasing it in and, I think, could be accomplished.

1110

**Mr Frank Miclash (Kenora):** I'd like to start off by welcoming you to the committee and thanking you as well for taking time to come to the northern part of Ontario. As you will remember, we met on a number of occasions while you were up there and I think people quite appreciated the fact that you took the time.

However, I must say I was somewhat taken back by some of your comments in terms of people feeling isolated, lacking resources, access to services, knowledge of government and comments like those you ended up making. As a person who's third-generation northerner, I can't say how much I've seen communications in the north: in terms of airports being built in most of the northern communities you visited; in terms of telephone linkage between all those communities and the offices, my office in particular. There's a 1-800 number that goes to every single community.

I was wondering if you can maybe expand on some of the things you found in the northern communities where they were not accessing government as much as they would like to. At this time, too, I must say that whenever I do a northern tour, and I do them frequently—we have additional moneys in our budgets as northern members to carry out these tours—I come across a lot of people, bureaucrats in particular, doing the same thing I am and on a much more regular basis than I do. So I'm just wondering if you could expand a bit on your comments.

**Ms Jamieson:** Thank you for the question. If your question is specific, perhaps I should ask first, are we talking about the James Bay communities specifically?

**Mr Miclash:** Those, and you also mentioned—I was pleased that for the first time some members visited the community of Kenora, and you found out they too had similar concerns and issues.

**Ms Jamieson:** I have since been back to a number of northern communities and this is a constant theme. I am not in the position you are, Mr Miclash, to say to what degree they've improved over time. I am in the position, though, to report what I heard from people, that there's a long way to go yet. There continues to be concern about lack of services or, if there are services, they're few and far between and not to the level people would like, whether you're talking about health issues in the north, the northern health travel grant—health was a hot issue up there, I can tell you—and lack of access to resources.

There is a feeling that in the south people have ready access to most things. As you go farther and farther north, the farther away you get from offices, the farther away you get from government bureaucrats, the less likely you're to know about the availability of grants, programs and so on. This is how people feel. This is what people told me.

In the James Bay area, I think the concerns were a little different because of the historical circumstance of the people on the James Bay coast. There, there was a real concern about services, but there's a tangled web of federal and provincial issues in those communities. Mind you, to a greater or lesser degree, this concerns the communities. Some of the communities are saying, "We don't care which government does it; we just know we have a need for a school," or whatever it is, "and we're not getting it," and insist that I should be able to take up their complaint, even though it might be federally related, for example. So that has special challenges.

There's also a feeling in those communities that I found: There's a profound sense of distrust in many, and this has to do with the history of relations, a very sad history of relations that we will all acknowledge exists in this province between aboriginal peoples and governments, historically, a distrust that if they advance it, government will in fact do something about it. I underline the fact that this is historical in nature, and even though improvements are being made, it took a long time to get that attitude; it's going to take a long time to deal with it.

I hope that helps amplify on some of the concerns I heard.

**Mr Miclash:** It does. When you hear these specific complaints from folks up there, are they relayed to the various ministries that are involved, and relayed directly?

**Ms Jamieson:** Yes. First of all, we again suggest that they contact someone in the ministry, give them a number and a name. Sometimes we also use translators in those communities. I travelled with a translator there. Again, I will find some places where people are ready to do that, and some places where they feel that even if they did it, they wouldn't get a response. So we have to deal with that as we find it. We may assist them. They call, they get the answer, they get more faith in the system to answer them the next time. We may do it; they see the response; they may have more courage to do it next time.

If it's a broader question, I will come back and write to, and did write to, a number of ministers and raise the issues. I acknowledge there's a federal element. I have even written to the federal minister and said, "Yes, I know



this is not my area of jurisdiction, but I heard it; you should know about it; whatever action you take, that's up to you, but I'm hearing it," and try and get the word out to the people who are most able to deal with it.

**Mr Miclash:** I just have one further comment. That's around the name. As the previous member had indicated, we spent some time over the last week on the name, and I must say that I'm quite satisfied with "Ombudsman," because I think a person coming to yourself in your capacity really doesn't care what the name is, as long as they get their problem solved. I'm finding that out, anyway, from my point of view, and the Ombudsman does have a history in this province. I guess I'm a little bit nostalgic when it comes to this, but that's where I'm coming from on the name. So I'll put that on the record.

**The Chair:** Thank you, Mr Miclash. Mr Drainville, if you will, please.

**Mr Dennis Drainville (Victoria-Haliburton):** Thank you very much for coming. I have a number of questions. I'd like to go back to the question that was raised by Mrs Witmer about the complaints that you get, many of which we would handle in our own constituency offices.

I raise this coming at it from a couple of different angles. I am in a riding, Victoria-Haliburton, that doesn't have a lot of government offices, so we end up being a clearing house for an awful lot of things that people would have to go to Oshawa or Peterborough or Toronto to do. We become a conduit for a massive amount of work. Actually, the fact that some people go to you is, as far as we're concerned, terrific, because you've got a lot more staff than I have and if people want to go and use your resources, that's fine. I say that as somebody who earnestly wants people's problems to be solved.

The other side of it is concern about your office and concern about the province of Ontario and focusing some of these things. I've read through it, by the way, and I appreciate a lot of the work that's gone into the report and some of the material that's here in terms of what people bring to you in terms of problems.

I look at that and I sort of think to myself, "Thank God people are using your office," but the other side of that is, some of those things people may well be frustrated about, but some of those things are really things that should be handed on to a constituency office. There are a thousand reasons why people don't. You may not like the local member; it may be a different political party; it may be that you phoned once and you didn't get them on the line because the line was busy. There are a whole lot of reasons why people don't end up connecting.

1120

My only concern about this is your ability to handle that kind of volume because of the number of complaints you get and how some of them, in my view, are inappropriate; not inappropriate in the sense that obviously there's an issue there to be dealt with and you deal with it and do it as quickly as you can, but rather the fact that you could almost build yourself into a situation in which you're taking so many varied problems that you end up not being able to do the very real, difficult cases that are going to

come up, because you need this huge bureaucracy to be able to handle it all.

That's one of my concerns. How do you make sure you're not overburdening the whole process by taking on some of these things that will inevitably make it more difficult for you to handle the very real concerns that you have to in your position?

**Ms Jamieson:** I guess the way we've done that is trying to make sure that in handling all the issues that come forward and referring people or letting them know what their avenues of appeal are, we're doing that quickly, we have the knowledge to pass on and we're not spending two or three hours. Many people just want someone to tell their problem to. I think it's an issue where you try to train staff to be sensitive, to hear people out, not to be overly bureaucratic in responding, even if the message is, "You're not in the right place," to give that sensitively and to do it time-efficiently.

It does put a lot of stress on people. My staff hear complaints from people all day long. That is our business and it's a very stressful environment. It's hard to be positive all the time and so on, but they do a terrific job at it. You try make sure people know where the focus of the work should be—on jurisdictional complaints—and make sure we're as helpful as we can be but realistic when we deal with people. We don't give them unrealistic expectations that we can take on the world. I have people calling about, "We think the Prime Minister shouldn't be around any more."

**Mr Ramsay:** You took care of that one.

**Mr Drainville:** That's a big one. Keep up the good work.

**Ms Jamieson:** Or "We're upset with the courts," or "We're not happy with the local employer," or whatever. You've got to listen and take that in, but let them know where the right place is to go with their concern. I don't want to make light of the issues coming to us. People feel strongly when they come to me. They've had it and they're determined to get something done. It's a very delicate balance; you're quite right.

The other thing to keep in mind is that while people may come on an issue and express an issue and may be too early in raising their complaint with us, and we may refer them on, we also are trying to keep note of the things they're complaining about. Why? Because sometimes you'll hear things in Ottawa, Timmins, Windsor, North Bay, and if you hear them enough, you'll know there is a broader issue here, that they're not getting good information, as they should be, from government offices, that there's something that can improve throughout government. So you might keep an element of the complaint that I can then explore.

This is where the Ombudsman's ability to do own-motion investigations is helpful, to separate the individual's concern, which we may or may not be able to help him with at that stage, from the symptoms, which might be: "Nobody's answering my phone call. I can't get a reply. I can't get through on the telephone line." We may then launch a broader investigation, looking at four, five, six

district offices, and fix something that person brought to us. So the balance is important, but there is value in every communication.

**Mr Drainville:** Let's move from that to the issue of efficiency. You mention in your section on efficiency, which I read with some interest, page 5 of your report, that you've established a requirement that complainants and government are informed at least every two months of the status of an investigation. Has that had any effects, and could you describe what kind of effects you've received with setting up that policy?

**Ms Jamieson:** I think the effect is twofold: One, internally, if we're into a formal investigation and you know that every two months you must update the parties, you're cognizant of what you have to update about; externally, people are kept in the picture, up to date. We thought we'd try the two-month rule. It's possible we could even improve on that. As you know, in most of our complaints, the average time it takes us to resolve an issue is about 102 days, a little over three months. So not every complaint goes that length of time, and I want to make that clear, but if it goes longer than two months, I think at a minimum people should know what we are doing with their issue, what progress we have made. I think it's been twofold.

**Mr Drainville:** You are very laudatory about the Ministry of Correctional Services. I'm interested in finding out what the change in the response time was in that particular situation.

**Ms Jamieson:** I didn't bring those statistics with me. I can certainly see if I can dig that up. I'm about to comment again; as you know, I'm writing my fourth report now, which will be tabled in a couple of months. I'll be able to give out my words of commendation for those who are doing well and encouragement for those who could do better. But I can tell you that in that particular year, yes, they did improve. Would you like those?

**Mr Drainville:** It would be interesting to note; it gives you sort of a sense. I think part of the function of this committee is a function of knowing not only how you set your priorities and how you set your procedures but also the success of those things. It's helpful for us to know that because it gives us a sense of how you're moving towards your objectives. I'd appreciate those figures if you have them.

I want to touch briefly on the issue of systemic problems. In a sense, my own work in 10 years of working with low-income people across the country and across this province led me to be very much in contact with people and groups of people who were experiencing systemic problems of various kinds. Whether it's sexism or agism or racism, whatever the problem was, our structures and our systems definitely reflect that.

First of all, let me just ask a brief philosophical question. You have expressed yourself on this before, but I think it would be good to hear again your response to this. Obviously, you deal with specific cases very often, but there are times when systemic problems arise. There is perhaps a coalescing of events and circumstances which leads you to believe that it is advisable for you in your

position as Ombudsman to do a study or an investigation of something that may be widespread. Could you just talk a little bit about how you see this particular situation in systemic problems and how you approach it as Ombudsman?

**Ms Jamieson:** Thank you for the opportunity to talk about this. This is a very important theme for me and for the staff at my office, because I think the potential to impact positively on the improvement of government administration really lies in looking at things systemically. You can resolve complaints one after one after one, but if you can see if there's a pattern there and effect change throughout government, boy, can you have an effect for the rest of us in this province, the other 10 million people who may not be coming forward but who may have occasion to meet those issues.

#### 1130

Systemic issues present themselves to me in a variety of forms, such as the inmate in the correctional facility who feels, as I reported in this last report, that the facility didn't meet his religious requirement. His religious requirement was to have a diet that met Muslim standards. That was his complaint, and the correctional facility did not provide that diet. We looked at it and we found the response from the ministry, which was, "We can't get that food. It's not available in our local town," to be without foundation and were able to encourage them at corrections to look at those kinds of barriers.

We also looked at hair products for inmates, another thing where these are rules which, on their face, seem quite fair and neutral but in their effect you find that they have an adverse impact on a particular group of people, and that's really the definition of systemic issues as I see it.

You might have a rule for response time to government calling for grant applications and it may be a week or three weeks; let's say it's three weeks for grant applications. That might work in the south, but it certainly doesn't work in the north where you may have the postal time and so on. Those are the kinds of issues where I think, if we can identify that, we can put together what the public is telling us, to jell that kind of an issue.

The chance for government to improve is just incredibly enhanced. So if I'm showing I'm keen about this area, I am keen about it, because I think there's a great potential there for change. I've looked at systemic issues in housing authorities that may have rules about a certain age you have to be to transfer into a one-bedroom. Last year we looked at one where you not only had to be 60, but to have a medical problem, and we found how that perhaps adversely affected others.

Every time we can do that, I know the potential for improvement for millions is there and I'm excited about that. So it is an area of particular concern to me and one which we are trying to look at in every complaint this way. That's what I mean when I talk about preventive ombudsmanship. Every complaint we look at, if we solve it, the question should be asked, "We've solved it for that person, but have we put in place things that will prevent it from happening again?" That forces all of us to look at the



possibility of a systemic issue in every complaint. So thank you for that question.

**Mr Drainville:** It leads me to my final question, Mr Chair, and that is a question that arose out of discussions that you've had with the committee before, discussions around jurisdiction and the scope of your endeavours. For instance, you mentioned that in British Columbia recently there was a decision to include municipalities within the purview of the Ombudsman in British Columbia.

The reason I raise that is because there actually has been sort of a process in all my questions. I've been talking basically about workload, efficiency and jurisdiction, and this leads me to this final point because part of my role in my former incarnations has been to look at structures and how structures and institutions reflect the society they are part of. I have a very high value on the role of the Ombudsman; I think it's a very important position. I think the function of the role of the Ombudsman is absolutely essential to the kind of society that we live in today.

One of my concerns, though, as somebody who looks at structures, is that we don't end up in another situation where we have created another structure which by its very nature will begin to emulate some of the problem structures of our society. In fact the larger the structure you build and the more bureaucratic that structure must necessarily become, the more that structure in itself will have the seeds of its inherent fall within it.

So I come to this final question, because I know that you have expressed an interest—and again, this is said very straight and very direct. I have no other agendas, but it's both a philosophical question for me and a question of the ability of your office to function appropriately; that is that if, let us say, hypothetically speaking, the Office of the Ombudsman were to move into such an area and to increase its job in the province, I have grave qualms about the ability of your office to be able to do an effective job.

On one hand I weight that by saying, "What value do you put on justice?" Philosophically, it has to be fundamental to our society. But we know from past history that by establishing such structures and increasing the size of those structures, we will, or we could possibly, if we look at history, see the destruction of that structure. The structure just begins not to work any more.

I put that out to you and just ask you to respond, taking into consideration some of the concerns that I have.

**Ms Jamieson:** Okay. I think you're quite right when you say that as structures get larger, there are greater risks, there's a greater tendency to bureaucratize even further, and that has inherent in it some problems.

When I look at Ombudsman-like services for things like municipalities, children's aid societies, hospitals, school boards, all the areas that I talked about in the section on jurisdiction, I know that the mark of a democratic government is the willingness to hold itself up to independent review, to open itself up to independent review and investigation. I know that's the hallmark, and that's why the Ombudsman's office was created in the first place.

It follows from that, in my thinking, that the same ability should be there whether you're talking about municipi-

pal governments, school boards, children's aid societies, general welfare applications, what have you. That ability to go to someone outside the structure that made the decision, to see if it was fair or not fair, should be available.

Does that translate into a much larger Ombudsman's office, my office? I'm not sure it does, and that's why I didn't take a hard position in the chapter on it. I think there are a number of ways of accomplishing it and that's why I put out the options. One way is to say, "Ombudsman, you do all this now." The resource implications of that are considerable, let's not kid anybody, to do that.

I think one way of thinking about it is to look at a couple of measures. One way of going would be to say a particular ministry over a particular area, for example, should have, inherently, its own complaints bureau, and that should be a first stop for looking at complaints from the public. That gives you at least the element of internal remedy and examination.

What you lose there is the independent review, but one way of doing it is to couple that with the ultimate ability to go outside. In the United States they're trying this in a number of the federal departments there. Every federal department has to have a complaints resolution director within it.

So that's one way, but I don't think we should think for a moment that the public will accept that as independent review. They won't. They will accept it as a place for them to try to solve their complaint. That could be one step; then ultimately to go outside.

If you don't centralize it, then what do you create if you accept that you need this independent ability? Do you create an ombudsman for children's aid societies? Another one for the school boards? Another one for municipalities? That too has its resource implications and they're incredible.

The other thing you'd lose there is you don't get the benefit of the 17 years of experience that is housed in my office with the staff who are so good at what they do. You'd be recreating it every time. You'd be reinventing the wheel and you might lose consistency, you might lose common standards of what is fair treatment. So you'd have the ability to investigate, but you'd lose on having some common understanding of what's fair.

#### 1140

You also might make it even more confusing for the public. They'd say, "Okay, so if I've got a problem with this, I go to that specialized Ombudsman; if I have a problem with this, I go over here," and you might be creating more layers. Then you have to face the question of how these layers relate to one another and what that does to the face of government. We're discussing something that deserves a good deal more discussion. I'll resist the temptation to go further, except to say I believe very strongly that the ability to investigate, by an independent person, the actions of agencies such as the ones listed in this chapter is critical to people having faith in government generally. How you accomplish it is in your hands, and I'm happy to help you think about it further.

**Ms Christel Haeck (St Catharines-Brock):** I thank Dennis for his question and how he built it, as well as your answer, because it in fact in some small way mirrors a

question we started to worry about yesterday. That bone is not necessarily well buried or in any way chewed up in any satisfactory manner.

You've indicated that there is a diversity of opinion out there among the Ombudsman community, but you also provide us with some interesting statistics and comments in your report, which was actually another area I wanted to address.

But first of all, on page 27 of your report, under the heading "Statement of Jurisdiction," you mention the municipalities and say the number of questions that you get relating to that particular area as well as social assistance, boards of ed, children's aid societies etc, and then you provide—for those who don't have a report in front of them—on page 39 a table of the questions you've received which really are outside your jurisdiction.

This is a wealth of experience; it's a wealth of knowledge. I think even our own offices have a range of understanding of what questions we're getting. Obviously, I pass on the concerns to the ministries in question that, "Hey, such and such is not happening." In the case of, say, a children's aid society, people want to know more about adoptions—just saying that off the cuff, but that is a concern. In the case of municipalities and some of these other agencies, how are you able to communicate to them, or have you taken that opportunity to communicate to them, the very real concern of all of our constituents in how they are being dealt with and the information being provided by that range of offices? Do you discuss anything with AMO, which is an umbrella organization which can obviously address these issues? Have you done so?

**Ms Jamieson:** AMO?

**Ms Haeck:** The Association of Municipalities of Ontario. Acronyms are rampant around this place.

**Ms Jamieson:** I'm not up to date; I know there are all these short forms. At every opportunity I raise the question. I was asked a year ago to talk to a group of municipalities in southeastern Ontario. I did go and talk to them about the need for them to have the essential qualities of an Ombudsman office, an ability to deal with complaints. I have not advanced the concept formally to AMO, but every chance I get to talk to a municipality, to talk to a mayor, to talk to the chief of a first nation, to talk to whomever, I advance the fact that they ought to be thinking, if they haven't already, about how they are going to provide for that element of people who have complaints about their way of doing business. If we have a complaint about a children's aid society—I know that a lot of my districts maintain one-on-one contacts. When I go and do public receptions, public education outreach visits, we invite people from all these agencies so that they know what we do, how we do it, so that we can work better together and frankly so I can influence them to think about what they're doing in this regard. I'm doing what I think we can. I welcome any suggestions for what more could be done.

**Ms Haeck:** As a supplement to that, obviously you have built up, again, a wealth of knowledge as far as what is or is not happening within the range of ministries that

exists in the provincial government is concerned. Is there a mechanism by which you can inform—I understand there is an opportunity with the Premier or deputy minister on a specific issue—on a more general basis where the logjams are? Obviously, your office has some idea of how to resolve some of these issues, because you've given opinions on them, but there are some general things. There are obviously a lot of requests that you get that you don't take any further, but there must be even some straight consumer information type of issues that get dumped into your lap on a regular basis that could be of assistance to all the ministries on how to really deal with the public. Do you take the opportunity? Do you have a mechanism by which you can communicate these concerns and suggestions to them?

**Ms Jamieson:** I think I can respond to the member's question in a couple of ways. One is that obviously we are trying to use the vehicle of the report as much as we can in that regard, to share the information trends etc we are seeing. I can tell you that this is very new for my office, this kind of analysis. We are trying to refine it and do it better every day.

On an individual complaint basis, whether I support or don't support the complaint, there are many things that we find out or that occur to us while we're investigating. We often will write the ministry involved and say: "Although I'm not supporting this complaint, there are some areas that trouble me. I'm going to raise them for you. Please, will you get back to me and tell me what you intend to do about them or what you think?" And they do. They're very open about it and they will get back to me. I appreciate that. That may be ministry-specific.

The other thing we do is look for opportunities to go out and talk to ministries—groups of regional managers, directors, deputies, whomever—to talk about the common areas of concern that keep coming up. It's usually the top 12 that I list here: delay, failure to keep a proper record, all those things. The case studies are helpful, but it's also helpful for me to remind them on strategies of how to improve in those areas, sometimes before they experience the problem. I might have a problem in ministry X that I think ministry Y should know about before it is faced with the same problem, and I'll do that, I'll let them know about it.

I am always looking for ways to share more. Last year I tried, with the words of encouragement and the words of commendation, to say, "You people are doing terrific," and, "You people can improve." I'll do that again this year in the annual report, and I will see how much more we can do along the lines you're raising, to share more of the impressions we're getting, what are the trends. It's one thing to list five complaints against the Attorney General, 16 against this ministry, but it doesn't tell you anything. It doesn't tell you if they're good or bad or just more in contact with the public. I think what people want is to know, "Am I hearing what they're complaining about and are we inputting in the right places?" I'll certainly keep that in mind. If there's anything more I can share with you, please let me know.



**Ms Haeck:** One of the things that has come up in my office is around family support payments in the AG's office. I think one of the simplest things that probably could take some of the heat out of the concern is actually having a real person answer the phone.

1150

People find these answering machines extremely frustrating. In fact, the phone company probably gets a lot of requests to replace phones on the wall, because out of sheer frustration they are calling everywhere. We obviously face it when we call here ourselves, "If you have a touch-tone phone, please press 1," and you sit for 20 minutes listening to the tape of how many numbers you're supposed to punch—and then you might get to the right person.

Having been a public service employee doing information and referral for 16 years, I fully appreciate how the public responds and how we have, at times, responded as a public agency and as a government. So I understand how some of your staff feel in listening to nothing but negatives all day, every day, for the length of time they do.

I do welcome a number of the points you raise here. But when you talk about preventive ombudsmanship, I would see that as a great public service your office could provide to the—well, it was 26 ministries and about five secretariats, but we all know that's changed. There is an awful lot of the public service customer relations side of that equation that I think could really take the heat out of a number of issues and relieve frustration for everyone. I'd appreciate any comments you have in your next report in that regard.

**Mr Robert Frankford (Scarborough East):** Following up your observation on the areas you don't cover, you mentioned hospitals; I note that health is right at the top of the areas you get complaints in. Also, with regard to your discussion about whether you should get into more areas or whether one should be having new ombudsmen with new mandates, I don't know if you saw this: I recently got a British Columbia Ministry of Health document setting out an agenda for reform. One of the things I noted there was a suggestion of having a health Ombudsman. Now, I'm not sure whether this was going to be a separate office or part of their existing Ombudsman; I could see how that might be an interesting discussion. I wondered if you'd noticed it and if you have any comments.

**Ms Jamieson:** I actually haven't focused on that development in British Columbia. I know of the others. I didn't know they were asking for a specialized Ombudsman in health. I can see some areas where it does make sense. Policing is one. That's why I thought, when Clare Lewis was given the mandate he was given, "Yes, that makes sense to me," and was very supportive of that development.

I have concerns about it when it multiplies. Federally, you've got the official languages, corrections, privacy, information—now those two are together—and they've kind of tended to go the route of specialized. I think the people

who are doing those jobs are doing a dynamite job. However, I think it becomes complicated for the public when there are so many doors and there's no relationship among the doors and there's a huge gap: Federally, there is no Ombudsman. I can't tell you how strongly my colleagues and I feel that there should be one.

I think that if you start doing specialized ones, you really beg the question of why the gaps where you're not. It does become confusing. Health is a hot issue. I think the table you were looking at was corrections. It's not the top area of complaint throughout the province but it certainly is, in corrections, one of the top areas.

I think that's all I have to offer. I'm happy to consider that further.

**Mr Frankford:** I guess why hospitals are there is that they really are an odd situation: They're publicly funded but essentially private institutions. In discussions, I certainly have heard people saying, "The boards should take more responsibility for hearing complaints." I think there's a very valid point made that they don't sufficiently consider complaints about what goes on. That presumably could be corrected by policy direction from the ministry or possibly a new hospitals act.

This is a very major area of essentially public concern. Even if there were a directive and the boards took that very seriously, I think there would still be complaints which slipped out and areas where they might be protecting their own institution. A very strong case could be made that the Ombudsman should have this area added, in the same way that the suggestion was made that you would have discussions with AMO, the Association of Municipalities of Ontario. There's also the Ontario Hospital Association, which would take the same sort of overview of the hospitals in the province.

**Ms Jamieson:** It's never made sense to me why I can take a complaint from a patient in a psychiatric facility operated by a province but not from the same patient suffering from the same psychiatric disability in a psychiatric unit of a public hospital. It just doesn't make sense to me, or, for that matter, why you can take a complaint about a college but not about a university.

It's one thing for hospital boards to say, "Come to us with your complaints," and I suggest to you that that's a very positive development. The problem is that if that's left on its own, you still don't have the essential element that the Ombudsman role has of independent investigation. It is independence that the public is extremely concerned about. They certainly told me in my survey that's what they're most concerned and most sceptical about: independence.

**The Chair:** Dr Frankford, would you care to recess at this point and pick it up at 2 o'clock?

**Mr Frankford:** Thank you, yes.

**The Chair:** We now stand recessed until 2 this afternoon.

The committee recessed at 1157.

## AFTERNOON SITTING

The committee resumed at 1411.

**The Vice-Chair:** We'll call the afternoon session for the standing committee on the Ombudsman in session. I will call on Mr Frankford for his question.

**Mr Frankford:** To follow up, and actually I've done a bit of homework over the lunch break on the situation in British Columbia, the recommendation there is actually that the provincial Ombudsman, and not a separate health Ombudsman, be given jurisdiction to deal with complaints regarding hospital boards and professional associations. That's what they're thinking.

It's also perhaps interesting to note the top paragraph in these priorities: They're suggesting that patients have the right to fully access their medical records. I can imagine that if one combined those two, we could get a very interesting situation.

Perhaps just to follow on from that, it says here they're proposing that the Ombudsman deal with complaints regarding professional associations. That clearly would be a difference from now. I guess there is the Health Services Appeal Board, but in many ways the professional associations have the last word. I can see that this may be something that's going to present some problems to them in the near future. For one thing, we're suddenly going to get a great many new professions, some of which are going to be quite small and have somewhat limited resources about investigation of complaints.

The other thing which occurs to me is the proposed legislation about sexual abuse. There has been quite a lot of reaction from some professions about this. I think that perhaps one aspect of this is that it presents something of a conflict or exaggerates the conflict present in self-regulating bodies. I just wonder whether they might even welcome some independent body, such as the Ombudsman, actually being involved in that.

I wonder if you have any thoughts on those thoughts.

**Ms Jamieson:** Only to say that you're quite right: The public is looking for greater openness everywhere, a greater degree of scrutiny for decisions that are being made, including in the professions. It's an ongoing question for me. I receive a good number of complaints about professionals and I look at the state of the law from time to time, particularly with respect to the law society. What I'm finding in professional associations generally is that there's always an opportunity to have serious issues dealt with: negligence, malfeasance, those kinds of things. In any of the professions there are sanctions available.

Where there is a gap is rudeness, lack of client service. A lot of the complaints that come to me are: "I can't get my professional"—whoever it is, lawyer, doctor, whatever—"to answer the telephone. I can't get a reply." There is no place for complaints like that to go in the current system, and that's an area I think bears some review.

The negligence, yes, but unprofessional conduct sitting on a panel, no. That's an area I would suggest you might want to think about. I now do have the ability to look at com-

plaints about the Health Services Appeal Board, the Health Disciplines Board, but those are very restricted areas.

**Mr Frankford:** With the new professions legislation, one of the features is to have more lay representation on the colleges, but it seems to me that although that might deal with the smaller issues you mention, it's not that certain. Obviously, lay members are not going to be there for ever. They're not going to be developing the body of expertise and all the resources you have to look into those complaints.

**Ms Jamieson:** The difference, I guess, is the powers available to the Ombudsman to enter government offices, seize records and take evidence under oath, all the powers that have been given to the office to get the facts out into the open. That's not available to others and that is a very clear difference.

**Mr Frankford:** If I can just use my time for one other health-related area which is quite peripheral to this, but perhaps follows on the discussions about services in the north, it seems to me you have the possibility of influencing policy or implementation around the rights to care, the rights to access to services, to help to equalize things, so if you're living somewhere remote in the north, it doesn't mean you're going to have to forego a range of health services and health practitioners.

**Ms Jamieson:** Yes. I do hear that question. Where I have to be careful is that I am not reviewing or becoming involved in the making of policy. That's not the job of my office. In the health care field, it's sometimes a difficult line to draw, because the complaint may be about something like an OHIP schedule for paying for a particular device.

One of the famous cases the Ombudsman, one of my predecessors, became involved in was breast pumps. OHIP didn't pay for breast pumps and the Ombudsman thought there was something unfair about that. That case was taken through and OHIP now pays for breast pumps. I have to draw a very clear line between what's policy and what's administrative unfairness, which really is my business.

The other thing I'd like to say is that one of the reasons why a lot of the professions don't want anyone else involved in looking at their conduct, at the way they do their business, one of the reasons that's given is that there's no expertise, that only professionals can look at professionals. I hear that argument all the time when I'm looking at a commission or a board dealing in a particular area.

The reality is that the expertise the Ombudsman's office has is administrative fairness. It's not about milk marketing, it's not about things specific to the scientific field a particular board might be in, nor need it be, as long as we can get that expertise to understand the fairness issue. Our expertise is in the business of fairness. There's 17 years of that, and that works in a commission, in the Human Rights Commission, in the securities commission, at Hydro, at the Ministry of Community and Social Services, wherever. Those rules hopefully are constant and uniform. So on that argument that I often hear from the professions, that's what I think about it when I hear it.



**Mr Frankford:** I appreciate that.

1420

**Mr Ramsay:** Ms Jamieson, going back to your report, I'd like to talk a little bit about the chapter on page 5 there, "Efficiency in Resolving Issues." You state there in the first paragraph that you "have established a maximum two-month recorded contract rule, meaning that both complainant and governmental organization are kept informed at least within two months, preferably far sooner."

I would be interested to know, since you've implemented that, what sort of results you have seen from that. Have you seen some improvements? Whether it's just client reaction or government responding, what has been the positive benefit of that?

**Ms Jamieson:** I hope I'm not repeating something I said this morning, but I guess it's twofold. One, we are much more aware of our progress, I think, on files. We're always aware, but this two-month rule forces us to focus at least every two months, and certainly we focus more often. Also, people are kept in the picture, they're up to date and the response to that has been very positive, because people like to know what is happening on their file and that progress is being made. The government response: It also keeps the issue very much alive for them, and so it prods response.

I think the benefits are positive. I, of course, would like to do even better than that and maybe make it every month. We're constantly looking at those things. You might be interested to know that we also have internal file review dates that are less than the two-month period, so there are other standards that augment that as well.

**Mr Ramsay:** Okay. Thank you.

In the third paragraph you mention that you "commend the Ministry of Correctional Services and most of the organizations for which it is responsible for the vast improvement" in its turnaround. Has that ministry made any attempt to provide some sort of in-house ombudsman service? Do you know if they're trying to rectify their own complaints before they come to you?

**Ms Jamieson:** As far as I'm aware, there is no internal ombudsman in that department. I also am anxious to underline the fact that this was the list as at a year ago. I'm doing the list now for how things are going this year, so I want you to know that I was commending the Ministry of Correctional Services as at the end of last March. They certainly were showing vast improvement.

One of the things I can tell you that is a constant in the ministry of corrections is that we get over 8,000 inmate approaches a year. For a lot of the things they call us about, we suggest they should be going to the superintendent of the institution they happen to be in, and one of the things I encourage corrections to do is to make its superintendents more accessible, to be more available to inmates so that they feel they can make the approach more easily.

A lot of inmates will still call us. They know they should go to the superintendent. They just wanted us to know, so in case they don't get anywhere with the superintendent, we're aware. Somehow they feel that empowers them, frankly, and that's not the only place that phenomenon occurs. I think I referred to that this morning as well.

**Mr Ramsay:** Do you take this as an inquiry or a complaint?

**Ms Jamieson:** Inquiry.

**Mr Ramsay:** That's an inquiry there, and the criteria are pretty well spelled out for people taking those—

**Ms Jamieson:** The way we've tallied complaints is that it has to be in writing. There are lots of things I tally as inquiries that are jurisdictional that we do resolve but we haven't counted as complaints because they're not in writing. It's very strict right now, a little bit artificial, I would suggest to you, and we're working on making it less artificial and more representative of the good work my staff does.

**Mr Ramsay:** When you report this, though, in your statistical information, you lump inquiries and complaints together.

**Ms Jamieson:** In the total, yes, and then we break them out.

**Mr Ramsay:** In all the pie charts. But they are broken out, are they?

**Ms Jamieson:** Yes.

**Mr Ramsay:** I actually wanted to get to that for a second, because I want to talk about how we report that to make it easier for everybody. Just before I get to that, it was just interesting, the comment you made about corrections, because I was going to ask, what is the change in the response time by the Correctional Services ministry?

I'm asking based on your last year's report and I'm getting a sense from what you're saying now that maybe they improved it and I was trying to find out what the improvement was, but now maybe you're implying—I don't want to put words in your mouth—that it's not as good as it had become. What changes have you seen with the response time of Correctional Services?

**Ms Jamieson:** I don't know whether you were in the room this morning, Mr Ramsay. Mr Drainville asked very much the same question and I undertook to pull the time periods as they then were and as they then became when I said they were improving. I'm happy to provide those to give you a sense of the measure of improvement.

I'll also make sure I put my mind to that in reporting in this annual report where I'm giving words of commendation and words of encouragement in the alternative so the criteria and the measures we're using are clear. I hope that'll be of assistance to the committee.

**Mr Ramsay:** Okay. I wanted to talk a little bit about how you report the statistical data. We discussed this week that it would be helpful if we could come to some agreement to maybe standardize it, because I see even the difference in reporting from your first annual report to this one. For instance, you have dropped the pie chart from 1990-91 that talks about "Resolved Complaints by Stages of Investigation," and that's interesting, because that would show the public and especially us how effective staff is at certain points and how time-consuming handling different complaints is. That was interesting and I see that's been dropped.

Even though in your latest one you break down the complaints by type and concern—which is actually good and I wouldn't say get rid of it; I like that, actually, and I think that's good—I find as a legislator I wouldn't mind you keeping also, though, what you had in 1988-89 where you break it down—and you mentioned it this morning—by ministry.

I think that might help keep the ministries on their toes, even though, as you say, it maybe doesn't give an indication of how bad a complaint it was or how frivolous maybe. We might have a bunch of angry farmers, for instance, and you see a large number of the ones up here, but then the way you've also broken it down where it's been fixed it would give a sense of, well, okay, maybe they were frivolous and they were corrected well. But I think it would keep the ministries on their toes.

For us as legislators, it would certainly give us a sense right away, "Gee, there seems to be a problem in ministry X," and so we as legislators, who would like to correct the situation, that gives us a sense of, "There looks to be a real problem in this ministry," and we would know by your data there.

But I like it, and especially for laypeople, the way you've actually put it out also that it's a Health matter or whatever it is. I think that's for a lot of people the subject matter. Corrections, complaints and inquiries by subject matter I think is actually good too. But I guess for me, being in government, I find that very effective.

**Ms Jamieson:** Yes. I'm just trying to understand how to be most helpful in putting it out. The reason I did it that way, frankly, is because I was appointed and then five months later it was annual report time and this was the way they were kept and my predecessors reported it, so I just repeated it.

What I found in this is it tells you numbers, but what it doesn't tell you is in fact which ministries are better or worse, because the fact that a ministry's got a higher number beside its name doesn't mean that it's better or worse. It might mean that it's more in contact with the public. It might mean, as you say, there is a group of people pressing something. It might also mean, though, that they're the best ones when it comes to my raising complaints with them and they solve them fast.

The fact that I got 50 or 2 doesn't transmit who's more or less giving good service to the public or who's more or less causing problems. That's why I struggled and came up with: "Okay, what do we really want to know? We want to know what people are upset about." That's why I went to the top 10, or top 12 I guess it is, and then felt, well, that gives you an idea of the areas of complaint but it still doesn't tell you who's terrific and who's in trouble. That's when I went to the gold-star column and the tarnished-star column, and frankly I'm searching for ways of improving. I'm trying to understand how I can help you.

1430

**Mr Ramsay:** That's good, because that's where I'd like to go next. You've asked the question, "What do we want to know and how should we report it?" As I've said in our previous discussions when you last came before us,

I really feel very strongly that your office and this committee should be very strong allies, and that I think we help each other. Maybe there's been a little more of that in the past where the ombudspersons who talked before really saw this committee as an ally. They could bring in something that wasn't resolved etc—and we could talk about that a little later on, that part of it. But this is an area where I think maybe we could work more closely together.

I was going to ask you if you think this is an area where we could work together, the committee and you, and let's try to decide among us what would be the best information and how to lay it out. Because I think we've got different sorts of clients looking at it: There are laypeople out there who want to see certain types of data; I think we as legislators would want to see certain types of data; and then maybe people in the government itself—and you notice I separate legislators and government, because I really think there's a big difference there—maybe there's something that the people in government would want to see. It might help them correct their jobs.

I would see that as an area where we could really work together. As you said, you're looking for suggestions. Maybe we could, in a sense, come to an agreement that this is how we'd like stats reported in the annual report and try to make it some sort of standardized thing and maybe put it in our rules of procedure so that the next ombudsperson would be looking at that also and we'd have some continuity, year over year, and we really could compare the performance of your office and the performance of ministries. We'd be able to do that year over year, because we'd have some standardized data presented in a standardized format.

What would you think of that as sort of almost a starting project to—

**Ms Jamieson:** I'm happy to receive any suggestions for how I can improve reporting statistics. You'll have to determine whether that's something on which you want to explore the role-making of the committee. I wouldn't presume to suggest that, but I'm happy for any suggestions because I'm looking for ways to improve all the time. It may be that some information that would be useful to committee or to legislators might not be useful to—as you say, there are different audiences. Something you may want may not—

**The Vice-Chair:** Can I just add to that as a point of information, having been a reference librarian in my other life, one of the things we used to talk about, looking at government documents, it's just that government publishes only for itself, not really taking into consideration who else uses it. Some of the discussion centring around this report really holds true for federal government publications and this government's publications and has held true for many, many years.

I think it would be an interesting project for all of us to hear how, in fact, the public looks at these statistics—and the public that probably is going to be the most readily accessible would be something like the legislative library—to see what kinds of questions they get and how they have to use your details. That's one within this building, but



then you take the Metropolitan Toronto Reference Library, which I believe is again a depository library, and how someone who is using statistics would look at these reports and what they would like to see from year to year.

The university libraries, those are people who are obviously dealing with a fair number of people, a range of projects. In fact frequently the public don't even want to do the work themselves. We found, when I was doing that work, we had to do a lot of the interpretation, pulling out the details for people and trying to find it consistently through Statistics Canada or other things. They don't always like the detail themselves, they don't like the statistics, they find them difficult to deal with.

I think if you asked some of the public service staff that actually has to interpret your detail, you might come up with some rather interesting answers on how they perceive what's in the written document. My point of information is ended.

**Ms Jamieson:** In fact, I do make this a talking point when I talk to people who are reading this, members of the public. I think you suggested some other areas where, if we haven't already touched base, it might be useful. I don't think the annual report has to be the only way that information gets out. The annual report, or any report that the Ombudsman does, he or she does at his or her prerogative. The contents are the prerogative of the Ombudsman, but there may be additional questions the committee may have.

I can tell you that where government's concerned, I undertake to give some of the departments I do most of my business with quarterly reports, and I do provide them, because it's most helpful for them, maybe at a deputy level, to keep track of what's happening in their department. This committee may have other needs, and I can look at how best I can provide within my mandate information so that those needs can be met, but I don't think it all has to be done in the context of writing the annual report.

**Mr Ramsay:** Just one other point on this issue before I give the floor to somebody else; it gets back to stats. I wouldn't mind seeing just more information when you make some statements, and I'm going back to efficiency in resolving issues, to even put some stats of info that back up what the problem is.

In the last paragraph in your section "Efficiency in Resolving Issues," after praising some of the changes with the Ministry of Correctional Services, you then say, and you're very diplomatic here, "I urge the Health Disciplines Board, the Ministry of Health, the Ministry of Financial Institutions and particularly the Ministry of the Environment and the Ontario Human Rights Commission to work toward improving their respective abilities to cooperate in finding prompt and satisfactory resolution to the complaints and issues brought to their attention."

I wouldn't mind if that was more hard-hitting in that you actually showed some examples of how poor that service might be, like, "Gee, from that ministry we're getting a six-week or a three-month response time, and I, as the Ombudsman, just don't feel that's proper." Again, I think

that more critical reporting where you think there's a problem would sharpen up those ministries and make everybody's job better. If they're being slack, in your opinion, I'd give them a slap. I don't think there's anything wrong with your annual report being used in order to praise, as you have, and to maybe slap on the wrist if a ministry or agency needs that.

I don't see a problem there. Maybe a few stats or something and people would say: "Gee, they've got something to handle. This ministry regularly takes four months to respond back to the Ombudsman. Well, that's not good." Public pressure would probably improve that by us seeing that. That's just a suggestion.

**Ms Jamieson:** I appreciate that. This report was a first, to name ministries, agencies and commissions that were doing well and that were not doing well. So I take your suggestions to heart. Thank you very much.

**Mr Murdoch:** I want to put a few things on the record that maybe should be there. I like the name "Ombudsman" too, even though I have a hard time saying it most times. Part of it is from lack of trying to find a better one, but I am open if something does come up. If there is a better name, I'd certainly look at it, but at this point I like it and I think a lot of people in Ontario relate to it. I think we'd have a hard time changing it, but we may do that. I just wanted to put that out.

Another thing I wanted to mention is that I would be very opposed to your ever getting involved in municipalities. I think they can handle themselves. They'll be judged when election time comes, and they have to run every three years. I think that's where it should stay. I'm open for discussion, and I'm sure our committee will have discussion on it because some people may feel differently. I just wanted to make sure you knew what my opinion was. If you started getting involved with municipalities, I just don't think you could handle the load. I think it just wouldn't work.

1440

The third thing I wanted to mention is that I did look at a lot of the complaints and the things you had to do. My office does handle a lot of those too. I have two of them. I have to have two of them in my riding. I would say at least half their time is used specifically on the things you're doing. I am just wondering if everybody else is doing that. I think around the discussions we've had here a lot of the members are, but I wonder if there are some members out there who aren't doing that who could handle some of the things that probably could be handled cheaper through my office than if they have to go into your bureaucracy. I'm not saying that you're overpaid and things like that, but it's just that you have a bigger bureaucracy to work with, whereas if somebody comes into my office, as I say, I have two—I have one person who works in each office—and the overhead isn't as high and things like that. Some of the smaller things they can handle. I do get calls from people in jail and things like that, and we've handled most of them.

There are things that we can't handle and do send them to you, as you know, and that's where we end up. I just

wonder if there isn't somewhere along the line that we can maybe get the politicians and your office together so that they can maybe handle more of them, because some of the things that you've handled I think should have been handled by the constituency office they were at.

The fourth thing I was going to mention, so it's in the record, is that you mentioned that you had an audit done at your request. I know that. I just want to put it on the record that I think this committee also recommended that before. We're glad you did that and I think that's maybe how we can work together: that if we do suggest things, that you carry them out. That's one thing you did and we'll see what happens there.

The last thing I have is on tribunals. We talked about this before—I don't know whether you and I have, but I've talked to other people, the OMB. Somebody can, as I see it anyway, take an OMB decision, if he's not happy with it, and come to the Ombudsman and ask you to look into it. I have some problems with that, your looking into it, because it's going to cost money for your office to do that. With a lot of at least OMB decisions—there could be other tribunals too—the decision's sort of final. There's nothing you can do about it. I know, even when you look at other things with ministries, the bottom line is that you can't make the ministry change; you have to depend on us to help you. But even this committee, if it's an OMB decision, cannot help you change that.

**Ms Jamieson:** Right.

**Mr Murdoch:** I guess the only thing you could come up with is if your office were in a different opinion from what happened at the OMB. You may show that there's a problem out there, but I just wonder how far we can go. I mean, I don't always agree with the OMB, and other tribunals too. I sometimes think their decisions are wrong, but there has to be a bottom line, there has to be somewhere where it stops. It just can't keep going on. People just can't keep complaining. That's the way I think human nature is: If you don't win, you like to try to win at some time. I just wonder what you think about that, because the tribunals are set up also by the government of the day. They appoint people to the OMB. Should you be getting involved in that? I just wanted some thoughts on that. I'm not saying one way or the other, but I'm just wondering. After a decision's been made, it's final. I'm talking more about land use, because by the time your decision would come out that land could be sold and reused and everything and there's just nothing. It's the law. It'd be decided and everything and there's nothing you could do. Do you get a lot, or what happens there?

**Ms Jamieson:** We do get a fair number of complaints about agencies, boards, commissions, tribunals. You're right that the decisions of some of them are absolutely final, and unless it's so bad that it's a nullity and they have to start again, there's very little that can be done about it. The good news is that if they can come somewhere and look at the procedures and so on, the problem may not repeat itself, if there is a problem. I recall looking at an OMB file—it's not in this report—where there was a case where there were two people sitting on the hearing and

there was a split decision, they were at loggerheads. So the individual, who had spent a fortune, more than one individual involved, was faced with: "Well, what? Are we going to go through this again?" They were at deadlock and they were going to have to foot the bill the second time around. Is that fair? We looked at it and said: "That isn't fair. If they have to go through this again, their costs should be paid. In future, don't sit two to a panel—one or three—so that you don't have deadlock. That way it improves the process." The good news is, or at least the outcome was, that those two sat down and came up with one decision. They didn't have to repeat the process.

I think there's another OMB case in here, but I know a lot of the tribunals make the argument that "We are like courts, we are final; no one except the court should be reviewing us." I want you to know that when I look at complaints about tribunals, I don't say I'm going to sit in their chair and determine whether, if I had the file before me, I would have decided otherwise. That's not my job. My job is to see if something happened there that was unfair. Was the procedure unfair? Did the person get a chance to be heard? Was all the evidence considered or was some important fact left out? Is the decision clear? Does the person get it? Did they understand when it was given to them? All those things, and in the end I can't displace their decision. I can recommend and hopefully recommend improvements for the future.

I get a lot of WCAT complaints. You can see that I report some of them. I have the securities commission, I have—heavens, there are numbers—the Human Rights Commission, that's no surprise to anyone, but we do look at them.

The alternative is, you say to people, "No, the Ombudsman can't look at tribunals." Then where do they go? "They can go to court," is the answer of some tribunals. That's true, they can, but the courts have been very clear: They will only get involved if the problem, the thing that went wrong, is an extreme case and then they'll overturn it. Again, you have no one there then to look at the rudeness, poor procedure, no notice provision, no opportunity to participate. You've got that whole gap where people have no place to go.

The other thing is, who can afford to take the government to court these days? Not too many people. So if you don't have somebody like the Ombudsman looking at those things or available to look at it, that's where you leave the public, and the public is going the other way. They want greater things, they want more things opened up to review, not fewer.

I guess that's how I'd answer that.

**Mr Murdoch:** Okay. That's fine. That's really all I have.

**The Vice-Chair:** Any more questions? Mr Mammoliti.

**Mr Mammoliti:** I agree with that last statement, by the way. I think people have a hard time affording courts and I would agree that the Ombudsman should continue looking after or at least investigating some of the complaints that come out of tribunal decisions for that reason. If that was final and if the courts were the only alternative, then of course a lot of people couldn't afford to go to



court. They need that mechanism, that assurance that there's somebody there. I thought I'd put that on record.

I want to go back to corrections for a second, if you don't mind. I feel a little guilty sitting here listening to a number of correctional issues come up and I'm the PA to the minister of corrections. So I think I need to bring a couple of questions out in terms of some of the misconceptions that are out there that only inmates complain about the correctional system, when in essence staffers and staff complain about the system as well, if I'm not mistaken. I notice on your list in figure 6 that classification, transfers and committal are tops. Are they from staff?

**Ms Jamieson:** No. Classification, transfer and committal are inmate-related.

**Mr Mammoliti:** Are they?

**Ms Jamieson:** I believe so, but you are quite right when you say we also receive complaints from staff.

**Mr Mammoliti:** Okay.

**Ms Jamieson:** Let me look down the list.

**Mr Mammoliti:** In terms of "classification" then, what would that mean, relating that to an inmate?

**Ms Jamieson:** Where they're classified to be in the institution, which section are they put into, are they moved. Transfer has to do with between institutions, those kinds of things.

1450

**Mr Mammoliti:** There's a particular problem within the ministry in terms of a transfer classification that the union's actually looking at, at this point. I thought that's what this item was in reference to.

**Ms Jamieson:** I don't believe so. Classification "other," which is another heading on the right side, in the right column, I think that's more likely to be the place where—

**Mr Mammoliti:** So in those particular cases you would refer them to their union?

**Ms Jamieson:** At times. It really depends. Sometimes we get complaints about competitions within government departments or institutions. Someone feels he or she applied for a job and was unfairly screened out, that sort of thing, and if they've exhausted their avenues of appeal we will look at it. If it's something that is the subject of a collective agreement, we would refer it to that table as being the appropriate place. It really depends on the nature of the complaint.

**Mr Mammoliti:** I noticed on the list as well that you talk about living conditions under a number of different categories. "Food diet"—I think you talked about that this morning—"canteen allowance program" and "smoking." Are "canteen allowance program" and "smoking" not related?

**Ms Jamieson:** They can be. Some of the issues having to do with smoking can also have to do with the provision of canteen allowance amounts and so on. Canteen allowance can also have to do with things like: "The last institution I was in I was able to buy X. Why am I not in this one?" It can also have to do with amounts. There are any number of different dimensions to that.

**Mr Mammoliti:** "Staff misconduct," what would that be about?

**Ms Jamieson:** On this list it's related to assault.

**Mr Mammoliti:** Assault in reference to—

**Ms Jamieson:** People may be alleging that there was undue force, that sort of thing. We would look at that to a degree if we thought there was some matter that needed to be taken up in terms of it being an offence. We would refer that, as we're required to do under the act, to the appropriate authorities.

**Mr Mammoliti:** Am I right in saying that a lot on this list, these categories, would be referrals that you would actually refer to a different agency or a different group to deal with the problem as opposed to your taking it on in the Ombudsman's office?

**Ms Jamieson:** A number are referrals. If you look to the figure above, you will see that although we received, in total, almost 8,000 complaints and inquiries, 1,951 of them are listed as complaints. That means that in the way we've been collecting statistics, that they were in writing and that some measure of investigation was done. Now, they may be resolved along the way, or inmates may abandon them when they leave the institution, or there may be an alternate adequate remedy becoming available during the course, or, as we're investigating, the institution may say: "Gee, I didn't know that particular fact. We're prepared to deal with it; no further investigation required."

So if you look at the way this figure is set up, almost 8,000 come to us; in almost 2,000 there's some measure of investigation. The almost-6,000 figure there, 5,981, a lot of those are phone calls. An incredible number of those are phone calls and a number of those are referrals, yes.

**Mr Mammoliti:** This would be a part of the 33,000 that you deal with on an annual basis?

**Ms Jamieson:** Right.

**Mr Mammoliti:** So 8,000 of them would actually be cases that you would do some sort of investigation on? They would take some legwork to do and the rest of them would be phone calls?

**Ms Jamieson:** In the cases of corrections—8,000 complaints and inquiries in total, 2,000 complaints where some measure of investigation was done, yes.

That's generally true. These 5,981 are inquiries. They may have been jurisdictional complaints. We may have made a couple of phone calls and solved them. They may have been ready for us, but we didn't count them because they weren't in writing. I think that's unfortunate, because my staff don't get the credit, the way we've collected, for the excellent work they're doing.

We are right now looking at a better way of keeping track of that, because when somebody calls, if they are at the end, their last resort, we do in fact solve it. They are in the right place, and just because they didn't write it down and send it in to us, I think my staff should get credit for having settled that. At the moment we slot them, by and large, in the inquiry column. It looks like we're just asking somebody a question and that's it, and sometimes we do much more.

**Mr Mammoliti:** Thank you.

**Ms Jamieson:** You're welcome.

**Mr Ron Eddy (Brant-Haldimand):** The possible future appointment of a federal Ombudsman was discussed earlier and I'd like to inquire about that. Do you get a lot of inquiries that affect federal government departments, agencies etc, and what happens to them?

**Ms Jamieson:** One of my favourite topics, Mr Eddy. Last year we counted 2,904 complaints and inquiries about the federal government. We don't count them all and I'm sure it's much more than that. What do we do? We refer the individuals to their member of Parliament. We refer the individuals, unfortunately, back to the ministry they are complaining about. I get a little frustrated with it all, because they may have already tried those things and can't get satisfaction for whatever reason, maybe can't get a full investigation done.

We desperately need a federal Ombudsman. If this committee chooses to say something about that, I will be very pleased. I think the timing is pretty good and I know there's been interest on and off in the federal field for some considerable time. I'm told Trudeau almost appointed a federal Ombudsman at one time, so maybe in all the election platforms being crafted somewhere this will make its way in. It'd be great.

**Mr Eddy:** Yes, I think it is a very important matter and we have discussed that. There was the appointment of either a federal Ombudsman or a parliamentary commissioner on aboriginal issues. Does that look like it's possible? I guess it's all under discussion at the present time and it's a matter of proposing it and keeping on the issue.

**Ms Jamieson:** Yes. I think so. I've written, my colleagues have written to the federal government on the parliamentary commissioner on aboriginal affairs. I've been referred to the royal commission. On the larger question, I have no substantive reply to date.

**Mr Eddy:** I think it certainly is important. Thank you.

**Mr Ramsay:** Just before you go, I want to talk a bit about what you mentioned in your report about freedom of information and protection of privacy and get an update of where that is. In referring to the previous questioning about the federal government, you noted the statistic you had for complaints and inquiries and you said you don't count all of them. What are your criteria for a complaint and inquiry, and then some that you have dismissed and your staff doesn't even record?

**Ms Jamieson:** We are attempting to count them all now. I asked for us to represent the federal breakout last year because I thought they were high, but I couldn't be sure at that time whether we had captured them all throughout the entire year. That's why I say it's probably higher than this.

We are at the moment looking at a computer system that would oblige us to count everything and what happens with it. I am told you can program computers now where it won't let you change the screen unless you say, "X happened or it didn't," and I think those are useful tools to remind us all. We try very hard. My staff do count. A lot of it historically has been manual. We've been working,

labouring, with an outdated computer system and trying to make the best of it.

That's why some of these categories frankly are artificial and I would like them to be a little closer. I'd like to be able to show complaints and inquiries, take the complaints and what happened to them, follow them right through to the end, take the inquiries, what happened to them, so it would be much clearer. We're working right now on that model.

I've got a system that Mr Wang authored many years ago. You may know that Wang has gone into receivership. The good news is our lease is up shortly and this is an opportune time for us to look at what computer models will best allow us to do our best work and show our best work. That's why I answer you the way I do, Mr Ramsay.

1500

**Mr Ramsay:** How old is that equipment?

**Ms Jamieson:** About 10 years, I believe.

**Mr Ramsay:** It's going to be really timely to get that changed. That will be good.

**Ms Jamieson:** It is. There are some good investigation models out now. There are some good people in the complaint resolution field doing some models that we're looking at.

**Mr Ramsay:** Good. Could you give us an update on the judicial review you had asked for in regard to trying to ease this conflict with the freedom of information and protection of privacy commissioner?

**Ms Jamieson:** Yes. In fact the person who brought the issue before the Information and Privacy Commissioner passed away, so it seemed not a useful issue to pursue in terms of devoting resources to it. That application has been discontinued, but I can tell you the larger problem remains. I think the only way to solve it is for an amendment to the Freedom of Information and Protection of Privacy Act, which makes it clear that the Ombudsman Act is on the list of acts where FIPPA does not apply.

On the one hand, you're saying to people, "Come to the Ombudsman in confidence." I think if we didn't say that, people may not come as readily and maybe government organizations wouldn't be as cooperative. They know I've got broad investigative powers. The balance to that was to make sure I had tight confidentiality requirements.

If an individual, as in this case, through the back door of the Information and Privacy Commissioner, somebody who wasn't a complainant, who wasn't a witness, who was in no way involved in the investigation, can access some of my records when they're in the hands of the government, I think there's something wrong with that system. I think it sends out the wrong message.

They're both laudable. It is laudable to have access for people to information about them. It is also laudable to have an Ombudsman who can do investigations in confidence, and we need to balance these things. I think it was an oversight when FIPPA was drafted. I've concluded that.

**Mr Ramsay:** Probably.

**Ms Jamieson:** I continue to urge an amendment. In the meantime, what does that leave me with? Doing verbal



briefings, taking a long time. It's a very cumbersome process at the moment.

**Mr Ramsay:** It sounds like there's a sense of urgency here to get this corrected. Do you have any sense that the government will be proposing an amendment?

**Ms Jamieson:** Not at the moment.

**Mr Ramsay:** You're not getting responses to your urgings, as you call them?

**Ms Jamieson:** Not at the moment. I have no indication that an amendment is going to be put forward.

**Mr Ramsay:** I just say to the committee, that's possibly something we should be addressing in our report. Are there any other bodies that run into the same conflict? The only omission right now is with the Ombudsman, or is there another?

**Ms Jamieson:** Not that I'm aware of. I can tell you in a number of jurisdictions the Ombudsman does both, so it's not a problem. In other jurisdictions where you've got the two, pains have been taken to make sure they are complementary. I think it's just because the Ombudsman Act was passed 17 years ago and FIPPA is much more recent that no one realized the issue. Now that we've found it, I'm hopeful we can address it.

**The Vice-Chair:** Mr Murdoch, nothing comes to mind at this moment? Mr Frankford? Mr Abel?

**Ms Jamieson:** I was wondering if someone was going to explore this issue, but since you haven't, I think I'd like to for just a brief moment, that is, recommendation-denied cases. I was reading Hansard and so on about this issue and I just want to make it clear how we end up there and why, for example, there weren't any in this report and how that flow goes. If I can just take you through, you start out with over 33,000 complaints and inquiries.

**The Vice-Chair:** What page are you on, just so everybody is on the same one?

**Ms Jamieson:** Sorry, page 39.

Of those, almost 19,000 are provincial. I'm at figure 1. You go over the page to figure 3, where I deal only with provincial, and you can see at the bottom of the complaints column, with all the things I have said about how we collect that, 6,960 get some measure of formal investigation.

Follow that figure down to the next figure and you'll find that, of those, we list 1,095 as resolved; 617 of them were resolved in favour of the complainant and, of those, 96 went—now there's no "96" there; this is what I'm just giving you in addition. This speaks to Mr Ramsay's earlier point about what stage. Of those, 96 tentative reports were done, what we call 18-3s. At that stage, you give it to the government. You hope they'll implement the recommendation or give you a reason why and more information etc.

Most of the 96 were solved at that stage. There were 39 that went to final report, 21-3. Of those, some of you will remember, 36 were human rights commission related. That final report means I've done everything possible. I'm giving it to the government agency for the last time to see if it's going to implement the recommendation or not.

If they are not, I then can go to the minister. I must go to the Premier. The 36 OHRCs went to the Premier. The

other three I resolved working with the CEO involved in the organization where the complaint was lodged. So of the 39 that went to final report, they got solved, whether at the stage of the head of the agency, board or commission or with the Premier. That means there were no recommendation-denied cases. If, having gone to the Premier, there is no satisfaction, that's when you get a recommendation-denied case. That's when I have the option to bring it to committee.

Now does that mean that the Ombudsman—and I'll put the questions—is solving these cases for something less than a brave outcome? I want to tell you how I arrive at the resolution, what's a fair resolution. In accepting a settlement or arriving at a fair resolution, I look at, what is the complainant seeking? What is in the public interest and in the interest of improved government administration generally? What meets fairness standards that I'm obliged to look at which go beyond the standards that the courts bring to bear? Those are the ingredients I look at.

If I arrive at a level of compensation, for example, and put it to a department, do I negotiate it down? I usually have arrived at that for a reason. The only way that would be looked at again is if further information became available that they put forward to cause anybody to have a good look at it again. But I arrive at a recommendation and I put it forward, and then we pound the pavement and persuade people to accept it.

I really wanted to speak to that question of how we end up with these. That's not to say I won't end up with 10 this year or 30 next year, or none—I don't know—but that's the process it goes through.

#### 1510

**Mr Ramsay:** I'd like to talk about this a little bit. I'm glad you brought it up, because when I look back at the history of your office and this committee, it seems to me that the resolution-denied cases are sort of the glue that's kept the two bodies together. If you look back in history, the committee has supported the Ombudsman 85% of the times past when these have been brought forward. In some cases it's been the power of your office, through this committee, that has in a sense taken a class action case right through the process. Through your power, you've empowered us as legislators.

There's an example from my constituency office about six years ago that happened with ONR and pensions. Like most members here, you run up against a brick wall. You say, as I still do today: "We do have a court of last resort? Let's contact the Ombudsman." And the Ombudsman couldn't make the ONR change, the Ontario Northland Railway. The Ombudsman brought it here. I wasn't on the committee at the time. The committee agreed, reported it to the Legislature and the Legislature agreed. Quite a few people—I think about 300 people—were affected by this, got their pensions, got that credit for a couple of years that was part-time work or something, which I think it was. They didn't want to credit them the way they were on contract or something, but they were sort of full-time.

Anyway, they got it corrected. It just really, I thought, showed the power of how a person can make a complaint when we've got an office such as yours, even when you,

because you have no power except for the prestige of the office, can still exercise a lot of influence by bringing those things forward. If you can convince us—and as I said, the history shows that 85% of the time this committee in the past has been convinced. We get it to the Legislature. The men and women of the Legislature are people who want to see the betterment of people's lives and are very progressive in those things and want to see things change.

I really see your office as an instrument for change. You just almost have to wonder that all of a sudden they've just sort of stopped. I grant that you're good; I just find it hard to believe that all of a sudden there's not one thing of the 26,000 complaints you get that may be still outstanding, that maybe, with a little extra shove, we could get the whole thing corrected. I don't know.

**Ms Jamieson:** The fact that the Ombudsman can bring a file before the Legislature, through this committee, through tabling a report, is a very persuasive tool. It's a very powerful thing to say that everyone knows that the public scrutiny can be brought to bear on actions. I talk about this everywhere I go. I am not saying that there will never be, but as long as government is implementing the recommendations, as long as it's making the changes—you've got the office being a change agent, that's true. But as long as they're cooperative, then things are happening. The fact is that if they're not you can bring it forward is powerful, and the fact that that's available is a very powerful thing to have. Again, I'm not saying that there isn't ever going to be any or that it isn't tough to convince.

**The Vice-Chair:** Just as a supplementary, because I think you've raised it and it sort of falls into some of the discussion that Mr Ramsay has raised and you've raised with these comments. But you had 36 complaints regarding the Ontario Human Rights Commission.

**Ms Jamieson:** Yes.

**The Vice-Chair:** According to your report, the date of which I believe was April 1992 when you were going to, I guess, have a look at it again. I'm sorry, I don't remember the exact words.

**Ms Jamieson:** That's what it says, yes.

**The Vice-Chair:** Okay. Obviously we are almost looking at a year having elapsed, and I'm wondering if you are able at this point to comment on what would be a substantial block of cases dealing with a very important agency of this government.

**Ms Jamieson:** I'm able to comment to this extent. I chronicle in there what happened and that I ultimately went to the Premier on this file. I did review the matter in April 1992, and at that time it looked to me, with the infusion of resources, with the task force that was being done to deal with the backlog and so on, that there was reason to believe progress was being made and would be made to allow the OHRC to get its cases dealt with. That being the case, I have allowed them that opportunity to move forward. I'm not a professional monitor on a week-to-week basis, so I've said: "Okay, fine. You've taken steps. Away you go."

I can tell you that I am right now looking at that question again. I think that's as far as I can go in commenting on it right now. Before I can say anything publicly, as you

know, I have to make sure I've said it to the people involved and then can bring it forward.

But I want you to know that I will not hesitate, should I have a situation on any case where government will not implement the recommendations, after a reasonable period of time, after seeing the Premier, to bring it to committee. I will not hesitate. I have to make a decision if it's an appropriate one. I have the option of bringing it. But if I think there's something there that needs to be dealt with and committee can certainly help with it, I will bring it. But as long as government's solving it, I can't create sort of blocks.

**The Vice-Chair:** Just to finish that question quickly, you raised it as a special investigation in this report.

**Ms Jamieson:** Right.

**The Vice-Chair:** Will we be seeing some sort of conclusionary remarks in your next report?

**Ms Jamieson:** Yes.

**Mr Ramsay:** You just mentioned the word "monitor." It was sort of my understanding that you didn't think it was in your purview to be monitoring after the fact, that you thought the changes were to be implemented to make sure that the government was doing them, but in this case you are.

**Ms Jamieson:** Sometimes I do, but I think, again, one has to balance the use of their resources. I could monitor every department for ever, and I have to say in some cases, "No, it's time for me to close that file." If I hear some more about it, I may have another look, but to keep reinvestigating the same thing over and over and month after month I think depletes the resources.

Sometimes I'll say, "I think you should implement X," and the government will say, "I'll develop a procedure on that." I don't simply close the file and go away. I say: "When you've developed it, provide it to me within a reasonable period of time." I'll look at it, and then I'll close it if I think it's sufficient, but not never to be opened again, but also not to be ridden herd on every week or every month. This is where I have to make sure I'm using—because there's how many other thousand people waiting for me to devote some time to them.

**The Vice-Chair:** Mr Murdoch, anything you'd like to pursue? Mr Abel?

**Mr Donald Abel (Wentworth North):** No.

**The Vice-Chair:** No? Very good. I got a chance to ask the human rights question I had been sort of sitting on before. I have to thank Mr Ramsay for giving me the segue into that. Unless my colleagues have some additional questions, and no one's responding, I will thank you very much for your time, Ms Jamieson. I think it's been another illuminating experience and I hope some of our comments have also been helpful to you.

**Ms Jamieson:** Yes. Thank you very much.

**The Vice-Chair:** Can we call the open part of the meeting adjourned? Paul, you had some other comments you wanted to make?

**Mr Paul Murray:** Yes, we had some further discussion.

**The Vice-Chair:** Some further discussion? Okay.

The committee continued in closed session at 1520.









## CONTENTS

Thursday 11 March 1993

Annual report, Ombudsman, 1991-92 . . . . .	B-173
---	-------

### STANDING COMMITTEE ON THE OMBUDSMAN

- \***Chair / Président:** Morrow, Mark (Wentworth East/-Est ND)
- \***Vice-Chair / Vice-Présidente:** Haeck, Christel (St Catharines-Brock ND)
  - Akande, Zanana L. (St Andrew-St Patrick ND)
- \***Drainville, Dennis** (Victoria-Haliburton ND)
  - Duignan, Noel (Halton North/-Nord ND)
  - Henderson, D. James (Etobicoke-Humber L)
  - Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
- \***Miclash, Frank** (Kenora L)
- \***Murdoch, Bill** (Grey PC)
  - Perruzza, Anthony (Downsview ND)
- \***Ramsay, David** (Timiskaming L)
- \***Witmer, Elizabeth** (Waterloo North/-Nord PC)

\*In attendance / présents

#### **Also taking part / Autres participants et participantes:**

Jamieson, Roberta, Ombudsman

#### **Substitutions present / Membres remplaçants présents:**

Abel, Donald (Wentworth North/-Nord ND) for Mr Duignan  
Eddy, Ron (Brant-Haldimand L) for Mr Henderson  
Frankford, Robert (Scarborough East/-Est ND) for Mr Perruzza  
Mammoliti, George (Yorkview ND) for Mr Johnson  
Rizzo, Tony (Oakwood ND) for Ms Akande

**Clerk / Greffier:** Carrozza, Franco

**Staff / Personnel:** Murray, Paul, committee counsel and research officer, Legislative Research Service







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